

TITLE 327 WATER POLLUTION CONTROL DIVISION

FINAL RULE

LSA Document #10-659(F)

DIGEST

Adds 327 IAC 5-1.5-6.5, 327 IAC 5-1.5-19.5, 327 IAC 5-1.5-19.7, 327 IAC 5-1.5-25.5, 327 IAC 5-1.5-62.5, 327 IAC 5-1.5-63.5, 327 IAC 5-1.5-64.2, 327 IAC 5-2-1.6, 327 IAC 5-2-1.7, 327 IAC 5-2-1.8, and 327 IAC 15-2-2.3, and amends 327 IAC 5-1-1.5, 327 IAC 5-1.5-1, 327 IAC 5-2-1.5, 327 IAC 5-2-3, 327 IAC 5-2-8, 327 IAC 5-2-14, 327 IAC 5-2-15, 327 IAC 5-2-17, 327 IAC 5-2-20, 327 IAC 5-2-22, 327 IAC 5-3-8, 327 IAC 5-3-9, 327 IAC 5-3-12, 327 IAC 5-3-14, 327 IAC 5-3.5-9, 327 IAC 5-4-5, 327 IAC 5-4-6, 327 IAC 5-16-1, 327 IAC 5-16-5, 327 IAC 5-16-5.3, 327 IAC 5-18-4, 327 IAC 5-18-5, 327 IAC 15-1-1, 327 IAC 15-1-2, 327 IAC 15-1-3, 327 IAC 15-1-4, 327 IAC 15-2-1, 327 IAC 15-2-2, 327 IAC 15-2-3, 327 IAC 15-2-5, 327 IAC 15-2-6, 327 IAC 15-2-7, 327 IAC 15-2-9, 327 IAC 15-2-10, 327 IAC 15-3-1, 327 IAC 15-3-2, 327 IAC 15-3-3, 327 IAC 15-4-1; 327 IAC 15-4-3; 327 IAC 15-5-1; 327 IAC 15-5-2; 327 IAC 15-5-4; 327 IAC 15-5-5; 327 IAC 15-5-6, 327 IAC 15-5-6.5; 327 IAC 15-5-8; 327 IAC 15-6-1; 327 IAC 15-6-2; 327 IAC 15-6-4; 327 IAC 15-6-8.5; 327 IAC 15-6-11; 327 IAC 15-6-12; 327 IAC 15-7-1; 327 IAC 15-7-5; 327 IAC 15-7-9; 327 IAC 15-13-1; 327 IAC 15-13-5; 327 IAC 15-13-15, 327 IAC 15-13-20; 327 IAC 15-13-22; 327 IAC 15-14-1; 327 IAC 15-14-3; to transfer authority to issue NPDES general permits, for the five general permits that the United States Environmental Protection Agency (U. S. EPA) has approved, from the Water Pollution Control Division to the commissioner to comply with the Clean Water Act (33 U.S.C. 1251 et seq.). This rulemaking will also update requirements to meet current federal standards and maintain the existing permit by rule general permits for those categories for which the U. S. EPA has not yet approved the administratively issued general permits. Repeals 327 IAC 5-2-4, 327 IAC 5-18-10, 327 IAC 15-2-4, 327 IAC 15-3-4, 327 IAC 15-8, 327 IAC 15-9, 327 IAC 15-10, 327 IAC 15-11, and 327 IAC 15-12. Effective 30 days after filing with the Publisher.

HISTORY

First Notice of Comment Period: October 27, 2010, Indiana Register (DIN: 20101027-IR-327100659FNA).

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Date of Second Hearing: July 8, 2015.

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SECTION 1. 327 IAC 5-1-1.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-1-1.5 Prohibitions

Authority: IC 13-11-2-99; IC 13-13-5-1; IC 13-22-2-3

Affected: IC 13-18-3

Sec. 1.5. Except as provided in 327 IAC 15-14, the point source discharge of sewage, treated or untreated, from a dwelling or its associated residential sewage disposal system, to the waters of the state is prohibited. *(Water Pollution Control Division; 327 IAC 5-1-1.5; filed Nov 13, 1995, 5:00 p.m.: 19 IR 660; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 2. 327 IAC 5-1.5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-1.5-1 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-3-15; IC 13-18-4

Sec. 1. In addition to The definitions contained in:

(1) the materials incorporated by reference in this article;

(2) 40 CFR 122; IC 13-12-3-1,

(3) IC 13-11-2; 327 IAC 1,

(4) 327 IAC 2-1; and

(5) 327 IAC 2-1.5; the definitions in and

(6) this rule;

apply throughout this article.

(Water Pollution Control Division; 327 IAC 5-1.5-1; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1412; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)

SECTION 3. 327 IAC 5-1.5-6.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-6.5 "Clean Water Act" or "CWA" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 6.5. "Clean Water Act" or "CWA" means the following:

(1) 33 U.S.C.1251 et seq.

(2) Regulations adopted under 33 U.S.C.1251 et seq.

(Water Pollution Control Division; 327 IAC 5-1.5-6.5)

SECTION 4. 327 IAC 5-1.5-19.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-19.5 "Existing source" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 19.5. "Existing source" means any source that is not a new source or a new discharger. *(Water Pollution Control Division; 327 IAC 5-1.5-19.5)*

SECTION 5. 327 IAC 5-1.5-19.7 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-19.7 "Facilities or equipment" defined**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3**Affected:** IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 19.7. "Facilities or equipment" means buildings, structures, or process or production equipment or machinery that form a permanent part of the new source and that will be used in its operation, provided that the facilities or equipment are of such value as to represent a substantial commitment to construct. The term does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source. (*Water Pollution Control Division; 327 IAC 5-1.5-19.7*)

SECTION 6. 327 IAC 5-1.5-25.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-25.5 "Individual NPDES permit" or "individual permit" defined**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3**Affected:** IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 25.5. "Individual NPDES permit" or "individual permit" means a an NPDES permit issued to one (1) facility that contains requirements specific to that facility. An individual NPDES permit is not a general permit. (*Water Pollution Control Division; 327 IAC 5-1.5-25.5*)

SECTION 7. 327 IAC 5-1.5-62.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-62.5 "Site" defined**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3**Affected:** IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 62.5. "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including, but not limited to, adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes. (*Water Pollution Control Division; 327 IAC 5-1.5-62.5*)

SECTION 8. 327 IAC 5-1.5-63.5 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-63.5 "Source" defined**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3**Affected:** IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 63.5. "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants. (*Water Pollution Control Division; 327 IAC 5-1.5-63.5*)

SECTION 9. 327 IAC 5-1.5-64.2 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-1.5-64.2 "Storm water" defined

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 64.2. "Storm water", as defined in 40 CFR 122.26(b)(13), means storm water runoff, snow melt runoff, and surface runoff and drainage. (*Water Pollution Control Division; 327 IAC 5-1.5-64.2*)

SECTION 10. 327 IAC 5-2-1.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-1.5 Incorporation by reference

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 1.5. (a) The following materials have been are incorporated by reference: in this article. Each of the following items, in addition to its title, will list the name and address of where it may be located for inspection and copying:

- (1) Clean Water Act (CWA), 33 U.S.C. 1251 et seq., in effect on July 1, 2004, is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (2) All Federal Registers listed in this rule are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (3) Code of Federal Regulations (40 CFR 100B149, 40 CFR 400—424, and 40 CFR 425—699), in effect on July 1, 2004, are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (4) Standard Form A Municipal (EPA Form 7550-22), available from the U.S. Environmental Protection Agency, Office of Water Resource Center, 401 M Street, S.W., Washington, D.C. 20460, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.
- (5) Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.), available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

Part	Title of Part	Revision Date
40 CFR 125	Criteria and Standards for the National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 130	Water Quality Planning and Management	July 1, 2011
40 CFR 133	Secondary Treatment Regulation	July 1, 2011

40 CFR 136	Guidelines Establishing Test Procedures for the Analysis of Pollutants	July 1, 2011
40 CFR 403	General Pre-Treatment Regulations for Existing and New Sources of Pollution	July 1, 2009
40 CFR 405	Dairy Products Processing	July 1, 2009
40 CFR 406	Grain Mills Point Source Category	July 1, 2009
40 CFR 407	Canned and Preserved Fruits and Vegetables Processing	July 1, 2009
40 CFR 408	Canned and Preserved Seafood (Seafood Processing)	July 1, 2009
40 CFR 411	Cement Manufacturing	July 1, 2009
40 CFR 412	Concentrated Animal Feeding Operations (CAFO) Point Source Category	July 1, 2009
40 CFR 413	Electroplating Point Source Category	July 1, 2009
40 CFR 414	Organic Chemicals, Plastics and Synthetic Fibers	July 1, 2009
40 CFR 415	Inorganic Chemicals Manufacturing Point Source Category	July 1, 2009
40 CFR 417	Soap and Detergent Manufacturing Point Source Category	July 1, 2009
40 CFR 418	Fertilizer Manufacturing Point Source Category	July 1, 2009
40 CFR 419	Petroleum Refining Point Source Category	July 1, 2009
40 CFR 420	Iron and Steel Manufacturing Point Source Category	July 1, 2009
40 CFR 421	Nonferrous Metals Manufacturing Point Source Category	July 1, 2009
40 CFR 423	Steam Electric Power Generating Point Source Category	July 1, 2009
40 CFR 424	Ferroalloy Manufacturing	July 1, 2009
40 CFR 425	Leather Tanning and Finishing Point Source Category	July 1, 2011
40 CFR 426	Glass Manufacturing Point Source Category	July 1, 2011
40 CFR 427	Asbestos Manufacturing	July 1, 2011
40 CFR 428	Rubber Manufacturing Point Source Category	July 1, 2011
40 CFR 429	Timber Products Processing Point Source Category	July 1, 2011
40 CFR 430	Pulp, Paper and Paperboard Point Source Category	July 1, 2011
40 CFR 432	Meat and Poultry Products	July 1, 2011

40 CFR 433	Metal Finishing Point Source Category	July 1, 2011
40 CFR 434	Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards	July 1, 2011
40 CFR 435	Oil and Gas Extraction Point Source Category	July 1, 2011
40 CFR 437	Centralized Waste Treatment Point Source Category	July 1, 2011
40 CFR 439	Pharmaceutical Manufacturing Point Source Category	July 1, 2011
40 CFR 442	Transportation Equipment Cleaning Point Source Category	July 1, 2011
40 CFR 443	Effluent Limitations Guidelines for Existing Sources and Standards of Performance and Pretreatment Standards for New Sources for the Paving and Roofing Materials (Tars and Asphalt) Point Source Category	July 1, 2011
40 CFR 444	Waste Combustors Point Source Category	July 1, 2011
40 CFR 445	Landfills	July 1, 2011
40 CFR 446	Paint Formulating Point Source Category	July 1, 2011
40 CFR 447	Ink Formulating Point Source Category	July 1, 2011
40 CFR 451	Concentrated Aquatic Animal Production (Aquaculture)	July 1, 2011
40 CFR 454	Gum and Wood Chemicals	July 1, 2011
40 CFR 455	Pesticide Chemicals	July 1, 2011
40 CFR 457	Explosives Manufacturing	July 1, 2011
40 CFR 458	Carbon Black Manufacturing Point Source Category	July 1, 2011
40 CFR 460	Hospitals	July 1, 2011
40 CFR 461	Battery Manufacturing Point Source Category	July 1, 2011
40 CFR 464	Metal Molding and Casting Point Source Category	July 1, 2011
40 CFR 465	Coil Coating Point Source Category	July 1, 2011
40 CFR 466	Porcelain Enameling Point Source Category	July 1, 2011
40 CFR 467	Aluminum Forming Point Source Category	July 1, 2011
40 CFR 468	Copper Forming Point Source Category	July 1, 2011
40 CFR 469	Electrical and Electronic Components Point Source Category	July 1, 2011

40 CFR 471	Nonferrous Metals Forming and Metal Powders Point Source Category	July 1, 2011
40 CFR 501	State Sludge Management Program Regulations	July 1, 2011
40 CFR 503	Standards for the Use or Disposal of Sewage Sludge	July 1, 2011

(b) Federal regulations that have been incorporated by reference do not include any later amendments than those specified in this section.

(c) The Code of Federal Regulations is available:

(1) electronically at <http://www.gpo.gov/fdsys/>; and

(2) in paper copies from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or online at <http://bookstore.gpo.gov/>.

The incorporated materials are available for public review at the Department of Environmental Management, Office of Water Quality, Permits Branch, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

(d) Where exceptions to materials incorporated by reference are necessary, these exceptions will be noted in section 1.8 of this rule or otherwise identified in this article.

(e) The incorporation of federal regulations as state rules does not negate the requirement to comply with federal provisions that may be effective in Indiana that are not incorporated in this article or are retained as federal authority. (*Water Pollution Control Division; 327 IAC 5-2-1.5; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1421; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2097; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936*)

SECTION 11. 327 IAC 5-2-1.6 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-2-1.6 Consistency with federal references

Authority: IC 13-14-8-1; IC 13-18-10-4

Affected: IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 1.6. The department shall issue NPDES permits consistent with the following:

Part	Title of Part	Revision Date
40 CFR 122	EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	July 1, 2011
40 CFR 123	State Program Requirements	July 1, 2011
40 CFR 124	Procedures for Decisionmaking	July 1, 2011
40 CFR 131	Water Quality Standards	July 1, 2011

(*Water Pollution Control Division; 327 IAC 5-2-1.6*)

SECTION 12. 327 IAC 5-2-1.7 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-2-1.7 Conversion of federal terms**Authority:** IC 13-14-8-1; IC 13-18-10-4**Affected:** IC 13-11-2; IC 13-14-12; IC 13-18; IC 13-30

Sec. 1.7. When used in 40 CFR, as incorporated by reference in this article, substitute the following unless otherwise indicated:

- (1) "Administrator" means the commissioner of the Indiana department of environmental management.
- (2) "Agency" means the Indiana department of environmental management.
- (3) "Director" means the commissioner of the Indiana department of environmental management.
- (4) "Environmental protection agency" or "EPA" means the Indiana department of environmental management.
- (5) "Water management division director" means the commissioner.
- (6) "State", "authorized state", "approved state", and "approved program" means Indiana.
- (7) "United States" means the state of Indiana.

(Water Pollution Control Division; 327 IAC 5-2-1.7)

SECTION 13. 327 IAC 5-2-1.8 IS ADDED TO READ AS FOLLOWS:

327 IAC 5-2-1.8 Exceptions**Authority:** IC 13-14-8-1; IC 13-18-10-4**Affected:** IC 13-11-2-38.3; IC 13-14-12; IC 13-18; IC 13-30

Sec. 1.8. The following are exceptions and additions to materials incorporated by reference in section 1.5 of this rule. Delete 40 CFR 122.3 and insert the following: The following discharges do not require an NPDES permit:

- (1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the waters of the state for the purpose of mineral or oil exploration or development.
- (2) Discharges of dredged or fill material into waters of the state and regulated under Section 404 of the Clean Water Act (33 U.S.C. 1344), except where the commissioner determines, on a case-by-case basis that such a discharge threatens to violate state water quality standards concerning toxic pollutants.
- (3) The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect dischargers. However, all applicable pretreatment standards promulgated under Section 307(b) and 307(c) of the Clean Water Act (33 U.S.C. 1317(b) and 33 U.S.C. 1317(c)) must also be complied with, and may be included in the permit to the publicly owned treatment works. This exclusion does not apply to discharges through pipes, sewers, or other conveyances owned by a public entity not leading to treatment works.
- (4) Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures,

range lands, and forest lands, except that this exclusion shall not apply to discharges from:

- (A) concentrated animal feeding operations as defined in IC 13-11-2-38.3 and 40 CFR 122.23; or
- (B) silvicultural point sources, as defined in 40 CFR 122.27, that are point sources subject to the NPDES permit program.
- (5) Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR 300 or 33 CFR 153.10(e) or of a state employee acting in a similar capacity.
- (6) Discharges into a privately owned treatment works, except as the commissioner may otherwise require under section 10(e) of this rule.
- (7) Any discharge by underground injection of salt or sulfur-bearing water or waste liquids associated with the recovery of oil and natural gas, if the discharge is pursuant to a valid permit issued by the natural resources commission under IC 13-8.
- (8) Any discharge consisting entirely of return flows from irrigated agriculture.
- (9) Deep injection wells, except in accordance with 327 IAC 5-4-2.

(Water Pollution Control Division; 327 IAC 5-2-1.8)

SECTION 14. 327 IAC 5-2-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-3 Permit application

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 3. (a) Any person required to have an NPDES permit, except for persons covered by general NPDES permits under 327 IAC 15, shall submit a complete application to the commissioner in accordance with this section, ~~and 327 IAC 5-3, and 40 CFR 122.21. In lieu of the forms specified in this section, a person may submit the application using equivalent state forms provided by the commissioner.~~

(b) An application for a permit shall be submitted to the commissioner by the time specified in 327 IAC 5-3-2 or, in the case of an application for a statutory modification of or variance from effluent limitations, by the time specified in 327 IAC 5-3-4.

(c) The owner of the facility or operation from which a discharge of pollutants occurs is responsible for applying for and obtaining a permit, except where the facility or operation is operated by a person other than an employee of the owner in which case it is the operator's duty to apply for and obtain a permit.

(d) All applicants for NPDES permits, **other than POTWs**, shall submit to the commissioner a completed Application Form 1, General as described in 45 FR 33545-56 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986. The commissioner may substitute a substantially equivalent form for submittal in place of the Form 1-~~General~~. **Information EPA Form 3510-1, revised August 1990.**

(e) Existing **industrial facilities, including** manufacturing, commercial, mining, and silvicultural ~~dischargers~~ **operations** applying for NPDES permits shall provide the commissioner with the additional information specified in Application Form 2C, NPDES as described in 45 FR

38054-71 (September 26, 1984), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner.

Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990.

(f) New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the commissioner with the additional information specified in application Form 2B NPDES, as described in 45 FR 33557-8 (May 19, 1980), including any revisions made to this form by EPA through December 31, 1986, or substantially equivalent forms supplied by the commissioner. **Applications for Permit to Discharge Wastewater, Concentrated Animal Feeding Operations and Aquatic Animal Production Facilities, EPA Form 3510-2B, revised November 2008.**

(g) New and existing POTWs shall provide the additional information specified by **40 CFR 122.21(j)** on Standard Form A-Municipal (EPA Form 7550-22) or substantially equivalent forms supplied by the commissioner. If EPA promulgates NPDES Form 2A, NPDES, the commissioner may specify its use for applications by new and existing POTWs. **Application Overview, EPA Form 3510-2A, revised January 1999. Pursuant to 40 CFR 122.21(j), the commissioner may waive any requirement of Form 2A that is not of material concern for a specific permit, if approved by EPA.** The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the commissioner:

- (1) All POTWs with design influent flows equal to or greater than one million (1,000,000) gallons per day.
- (2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program.

(h) In addition to the POTWs listed in subsection (g), the commissioner may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

- (1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of industrial contributors).
- (2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow).
- (3) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW.
- (4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to one (1) of the Great Lakes, or a water designated as an outstanding natural resource.
- (5) Other considerations (including, but not limited to, the history of toxic impact and compliance problems at the POTW), which the commissioner determines could cause or contribute to adverse water quality impacts.

(i) For POTWs required under subsection (g) or (h) to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols, which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred later.

(j) All POTWs with approved pretreatment programs shall provide, to the commissioner, a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

(k) Except for stormwater discharges, all existing industrial facilities engaged in manufacturing, commercial, mining, and silvicultural operations shall provide the additional information specified in Application Form 2C, Wastewater Discharge Information, EPA Form 3510-2C, revised August 1990.

~~(k)~~ **(l)** Except for storm water discharges, all new sources and new dischargers **industrial facilities** engaged in manufacturing, commercial, mining, and silvicultural activities **operations** shall provide the additional information specified in Application Form 2D, NPDES as described in 51 FR 26999-27014 (July 28, 1986) or substantially equivalent forms supplied by the commissioner. **New Sources and New Dischargers: Application for Permit to Discharge Process Wastewater, EPA Form 3510-2D, revised August 1990.**

~~(l)~~ **(m)** Except for storm water discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the commissioner with the additional information specified in Application Form 2E, NPDES as described in 51 FR 26994-98 (July 28, 1986) or substantially equivalent forms supplied by the commissioner. **Facilities Which Do Not Discharge Process Wastewater, revised August 1, 1990.**

~~(m)~~ **(n)** Discharges of storm water associated with **new and existing** industrial activity as defined in 40 CFR 122.26(b)(14) shall provide additional information specified in application NPDES Form 2F, **Application for Permit to Discharge Storm Water Discharges Associated with Industrial Activity, EPA Form 3510-2F, revised January 1992.**

~~(n)~~ **(o)** Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three (3) years from the date the application is signed.

~~(o)~~ **(p)** In the case of an application for permit reissuance by a manufacturing, commercial, mining, or silvicultural discharger who has previously submitted an application in accordance with subsection (e) or ~~(k)~~, **(l)**, the permittee may request a waiver of the submission of analytical data for toxic pollutants otherwise required as part of the application if:

- (1) analyses reported in the previous **application or** applications of at least two (2) samples of the effluent did not detect the presence of the toxic pollutants; and
- (2) the permittee certifies that, to the best of his knowledge, no change in his operation has occurred since the previous **application or** applications that would give reason to believe the previous results would no longer be applicable.

The commissioner may grant or deny, in the commissioner's discretion, a request for a waiver under this subsection.

~~(p)~~ **(q)** For discharges to waters within the Great Lakes system, in addition to the other requirements of this section, applicants requesting a permit renewal shall submit valid, representative receiving waterbody monitoring data for every metal monitored or limited in the applicant's existing permit. If the existing permit contains monitoring for cadmium, chromium (III), copper, lead, nickel, or zinc, the applicant shall also submit receiving waterbody monitoring data for hardness. The commissioner may require waterbody monitoring for additional substances if the data are necessary to process the permit application. If valid,

representative, monitoring data in the waterbody for these parameters are already available, the applicant may request that this existing data substitute for the monitoring required under this subsection. The commissioner may require the submission of this additional receiving waterbody monitoring data for applicants requesting a new, renewal of, or modification of an NPDES permit if these additional data are necessary to draft an NPDES permit.

(r) The permit application forms described in this section are available online at <http://cfpub.epa.gov/npdes/> or from the IDEM Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. *(Water Pollution Control Division; 327 IAC 5-2-3; filed Sep 24, 1987, 3:00 p.m.: 11 IR 618; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1738; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1422; errata filed Aug 11, 1997, 4:15 p.m.: 20 IR 3378)*

SECTION 15. 327 IAC 5-2-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-8 Conditions applicable to all permits

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-7-1; IC 13-30-10-1

Sec. 8. The following conditions apply to all NPDES permits and shall be incorporated into the permits either expressly or by reference:

(1) The permittee must comply with all terms and conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act (~~CWA~~) and the **EMA environmental management laws** and is grounds for:

- (A) enforcement action;
- (B) permit termination, revocation and reissuance, or modification; or
- (C) denial of a permit renewal application.

A permittee may claim an affirmative defense to a permit violation; ~~however,~~ if the circumstances of the noncompliance meet the criteria of an upset as defined in subdivision ~~(12)~~. **(13)**.

(2) If the permittee wishes to continue an activity regulated by a permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(3) The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.

(4) The following permit actions:

- (A) Permits may be modified, revoked and reissued, or terminated for cause.
- (B) Any information that the permittee knows or has reason to believe would constitute cause for modification or revocation and reissuance of the permit, such as plans for physical alterations or additions to the permitted facility that:
 - (i) could significantly change the nature of, or increase the quantity of, pollutants discharged; or
 - (ii) the commissioner may request to evaluate whether such cause exists; shall be submitted for the commissioner's evaluation at the earliest time such information becomes available.
- (C) The filing by the permittee of:
 - (i) a request for a permit modification, revocation and reissuance, or termination; or
 - (ii) information specified in clause (B);
 does not stay or suspend any permit term or condition.

(D) The permit may not be transferred to any person except in accordance with section 6(c) of this rule.

(5) If any applicable effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** for a toxic pollutant injurious to human health and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the commissioner shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. Effluent standards or prohibitions established under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** for toxic pollutants injurious to human health are effective and must be complied with, if applicable to the permittee, within the time provided in the implementing regulations, even absent permit modification.

(6) The permit does not convey any property rights of any sort or any exclusive privilege.

(7) The permittee shall furnish to the commissioner, within a reasonable time, any information that the commissioner may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the commissioner, upon request, copies of records required to be kept by the permit and 40 CFR 122.41(h).

~~(7)~~ **(8)** The permittee shall allow the commissioner, or an authorized representative (including an authorized contractor acting as a representative of the commissioner), upon the presentation of credentials and such other documents as may be required by law **to:**

(A) ~~to~~ enter upon the permittee's premises where a ~~point source~~ **regulated facility or activity** is located or where any records must be kept under the terms and conditions of the permit;

(B) ~~to~~ have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(C) ~~to~~ inspect, at reasonable times:

(i) any monitoring equipment or method;

(ii) any collection, treatment, pollution management, or discharge facilities; or

(iii) practices required or otherwise regulated under the permit; and

(D) ~~to~~ sample or monitor, at reasonable times, any discharge of pollutants or internal wastestream (where necessary to ascertain the nature of a discharge of pollutants) for the purpose of evaluating compliance with the permit or as otherwise authorized.

~~(8)~~ **(9)** The permittee shall at all times maintain in good working order and efficiently operate all facilities and systems (and related appurtenances) for collection and treatment that are:

(A) installed or used by the permittee; and

(B) necessary for achieving compliance with the terms and conditions of the permit.

This subdivision does not act as an independent source of authority to set effluent limitations. Such limitations will be based on the design removal rates of installed treatment facilities only as required under this article. Nor should this subdivision be construed to require the operation of installed treatment facilities that are unessential for achieving compliance with the terms and conditions of the permit.

(9) (10) The permittee shall comply with monitoring, recording, and reporting requirements established in accordance with sections 13 through 15 of this rule. **Penalties**

include the following:

(A) Section 309(c)(4) of the CWA as well as IC 13-30-6-2 and IC 35-50-3-3, Clean Water Act (33 U.S.C. 1319(c)(4)), provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under a permit shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

(B) IC 13-30-10-1 provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.

(11) The following are reporting requirements:

(A) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

(B) The permittee shall give advance notice to the commissioner of any planned changes in the permitted facility, any activity, or other circumstances that the permittee has reason to believe may result in noncompliance with permit requirements.

(C) The permittee shall orally report information on any of the following types of noncompliance within twenty-four (24) hours from the time the permittee becomes aware of such noncompliance:

(i) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(ii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the permit to be reported within twenty-four (24) hours.

(iii) Any noncompliance that may pose a significant danger to human health or the environment. Reports under this item shall be made as soon as the permittee becomes aware of the noncomplying circumstances to the emergency response telephone numbers specified in 327 IAC 2-6-2. **(888) 233-7745.**

(iv) Any upset that exceeds any effluent limitation in the permit.

A written submission shall also be provided within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. The commissioner may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(D) The permittee shall also report all instances of noncompliance not reported under clauses (A) through (C), at the time discharge monitoring reports (DMRs) are submitted. The reports shall contain the information listed in clause (C).

(E) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the commissioner, it shall promptly submit such facts or

corrected information.

(F) The permittee shall give notice to the commissioner as soon as possible of any planned physical alterations or additions to the permitted facility. (As used in this clause, "permitted facility" refers to a point source discharge, not a wastewater treatment facility. See IC 13-18-7-1.) Notice is required only when either of the following applies:

(i) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source. ~~in 327 IAC 5-1-2(b).~~

(ii) The alteration or addition could significantly change the nature of, or increase the quantity of, pollutants discharged. This notification applies to pollutants that are subject ~~either~~ **neither** to effluent limitations in the permit ~~or~~ **nor** to notification requirements under section 9 of this rule.

~~(11)~~ **(12)** The following are requirements for bypass:

(A) The following definitions:

(i) "Bypass" means the intentional diversion of a waste stream from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which would cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(B) The permittee may allow any bypass to occur that does not exceed any effluent limitations contained in the NPDES permit, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to clauses (C) and (D).

(C) The permittee must provide the commissioner with the following notice:

(i) If the permittee knows or should have known in advance of the need for a bypass (anticipated bypass), it shall submit prior written notice. If possible, such notice shall be provided at least ten (10) days before the date of the bypass for approval by the commissioner.

(ii) The permittee shall submit notice of an unanticipated bypass as required by subdivision (10)(C).

(D) The following provisions are applicable to bypasses:

(i) Bypass is prohibited, and the commissioner may take enforcement action against a permittee for bypass unless the following occur:

(AA) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(BB) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down time. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment down time or preventive maintenance.

(CC) The permittee submitted notices as required under clause (C).

(ii) The commissioner may approve an anticipated bypass, after

considering its adverse effects if the commissioner determines that the anticipated bypass will meet the three (3) conditions listed in item (i). The commissioner may impose any conditions determined to be necessary to minimize any adverse effects.

~~(12)~~ **(13)** The following are requirements for upset:

(A) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(B) An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of clause (C) are met.

(C) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence, that:

- (i) an upset occurred and the permittee has identified the specific cause of the upset; if possible;
- (ii) the permitted facility was at the time being operated in compliance with proper operation and maintenance procedures;
- (iii) the permittee complied with any remedial measures required under subdivision (3); and
- (iv) the permittee submitted notice of the upset as required in subdivision (10)(C).

~~(13)~~ **(14)** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

~~(14)~~ **(15)** All applications, reports, or other information submitted to the commissioner shall be signed and certified as defined **described** under section 22 of this rule. **Penalties include the following:**

(A) Section 309(c)(4) of the CWA IC 13-6-2, and IC 35-50-3-3 provide Clean Water Act (U.S.C. 1319(c)(4)), provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.

(B) IC 13-30-10-1 provides that a person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit issued by the department commits a class B misdemeanor.

(Water Pollution Control Division; 327 IAC 5-2-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 620; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1741; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1423)

SECTION 16. 327 IAC 5-2-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-14 Recording of monitoring results

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 14. (a) Any permittee required to monitor under 327 IAC 5-2-13 shall maintain records of all monitoring information and monitoring activities, including:

- (1) the date, exact place and time of sampling or measurements;
- (2) the **person or** persons who performed the sampling or measurements;
- (3) the **date or** dates analyses were performed;
- (4) the person **or** persons who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of such measurements and analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three (3) years. **These records shall be retained on-site at the permitted facility or in such a manner that the records are reasonably available for review by agency staff to comply with the provisions of 327 IAC 5-1-3.** The three-year period shall be extended:

- (1) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee; or
- (2) as requested by the commissioner.

(Water Pollution Control Division; 327 IAC 5-2-14; filed Sep 24, 1987, 3:00 p.m.: 11 IR 629)

SECTION 17. 327 IAC 5-2-15 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-15 Reporting requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-14-4-3; IC 13-18-4

Sec. 15. (a) Permittees shall report to the commissioner, using discharge monitoring reports (DMR) (EPA Form 3320-1) and, also, in the case of POTWs, semipublic, state, and federal facilities' reports of operation, the results of any monitoring specified by the permit, under section 13 of this rule, as often as required by the permit, but in no case less than once per year. POTWs with pretreatment or hybrid pretreatment requirements in their NPDES permits as well as industrial dischargers shall also submit the results of effluent analysis on the Indiana Discharge **Monthly Monitoring Report (MMR) for Industrial Discharge Permits (State Form 30530).** **Alternatively, permittees may be required by the commissioner to utilize agency-approved electronic reporting formats for the submittal of all NPDES-related reports in lieu of submitting paper copies of such documents.**

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. Other monitoring data not specifically required in the permit (such as internal process or internal wastestream data) that is collected by or for the permittee need not be submitted unless requested by the commissioner. Any such additional monitoring data that indicates a violation of a permit limitation shall be followed up by the permittee, whenever feasible, with a monitoring sample obtained and analyzed pursuant to approved analytical methods. The results of the analysis of the follow-up sample shall be reported to the commissioner in the permittee's DMR.

(c) All reports required by this section shall be prepared by or under the direction of a certified wastewater treatment plant operator or a certified water treatment plant operator licensed under the provisions of **327 IAC 5-22 or 327 IAC 8** when such reports concern a discharge originating in whole or in part from a wastewater treatment plant or a water treatment plant, respectively, as defined in IC 13-11-2.

(d) As used in this section, "approved analytical methods" means those test procedures for the analysis of pollutants under section 13(d) of this rule.

(e) NPDES effluent data is to be reported on the monthly DMRs as follows:

(1) Effluent concentrations less than the LOD shall be reported as less than the value of the LOD. For example, if a substance is not detected at a concentration of one (1.0) milligram per liter, the value shall be reported as < 1.0 mg/l.

(2) Effluent concentrations greater than or equal to the LOD shall be reported at the measured value. Effluent concentrations greater than or equal to the LOD and less than the LOQ that are reported on a DMR shall be annotated on the DMR to indicate that the value is not quantifiable.

(3) Except as provided in section 11.6(h)(3) of this rule, when the individual daily values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(4) Mass discharge values that are calculated from concentrations reported as less than the value of the LOD shall be reported as less than the corresponding mass discharge value.

(5) Mass discharge values that are calculated from effluent concentrations greater than the LOD shall be reported at the calculated value.

(6) Except as provided in section 11.6(h)(3) of this rule, when the individual daily mass discharge values are averaged for the purpose of determining the weekly average or monthly average, values less than the LOQ shall be accommodated in calculation of the averages using statistical methods that have been approved by the commissioner.

(Water Pollution Control Division; 327 IAC 5-2-15; filed Sep 24, 1987, 3:00 p.m.: 11 IR 629; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1754; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1466; filed Feb 14, 2005, 10:05 a.m.: 28 IR 2126)

SECTION 18. 327 IAC 5-2-17 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-17 New sources and new dischargers

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 17. (a) Definitions. "Existing source" means any source which is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water

pollution treatment for the source.

"New source" and "new discharger" are defined in 327 IAC 5-1-2.

"Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

~~(b) (a)~~ Criteria for A new source determination ~~(1)~~ **shall be made that** construction of a new source has commenced if the owner or operator has:

~~(A)~~ **(1)** begun, or caused to begin as part of a continuous on-site construction program:

- (i) ~~(A)~~ any placement, assembly, or installation of facilities or equipment; or
- (ii) ~~(B)~~ significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

~~(B)~~ **(2)** entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

~~(c)~~ **(b)** Effect of compliance with new source performance standards **shall be as follows:**

(1) Except as provided in subdivision (2), any new source which meets the applicable promulgated new source performance standards from the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under Section 301(b)(2) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311(b)(2))** for the shortest of the following periods:

- (A) ten (10) years from the date that construction is completed;
- (B) ten (10) years from the date the source begins to discharge process wastewater or other wastewater not related to construction; or
- (C) the period of depreciation or amortization of the facility for the purposes of ~~Section~~ **Sections 167 or and 169 (or both) of the Internal Revenue Code (26 U.S.C. 167; 26 U.S.C. 169).**

(2) The protection from more stringent standards of performance afforded by subdivision (1) does not apply to:

- (A) additional or more stringent permit conditions which are not technology-based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))**; and
- (B) additional technology-based permit conditions established under 327 IAC 5-5-2(b) to control pollutants listed as toxic under Section 307(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1317(a))** or as hazardous substances under Section 311 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1321)** and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those

other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under subdivision (1) will expire on or after the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of Section 301 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311)** and any other then applicable requirements of the ~~CWA~~ **Clean Water Act** immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permit before beginning to discharge. Within the shortest feasible time (not to exceed ninety (90) days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

(Water Pollution Control Division; 327 IAC 5-2-17; filed Sep 24, 1987, 3:00 p.m.: 11 IR 631)

SECTION 19. 327 IAC 5-2-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-20 Enforcement

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-14-10; IC 13-18-3-15; IC 13-18-4; IC 13-30

Sec. 20. (a) Any violation of this article:

(1) may subject the person causing or contributing to said violation to administrative or judicial enforcement proceedings, pursuant to ~~IC 13-7-5, IC 13-7-11, and the penalties provided under IC 13-7-13;~~ **IC 13-30;**

(2) may be cause, pursuant to section 16 of this rule, for modification, revocation and reissuance, or termination of an NPDES permit; and

(3) may, in an appropriate case, warrant the invocation of emergency procedures provided in ~~IC 13-7-12.~~ **IC 13-14-10.**

(b) The three (3) enforcement responses enumerated in subsection (a) are independent and not mutually exclusive. Thus the initiation and prosecution of any particular response to a violation of this article does not exclude the concurrent or subsequent initiation of any other response.

(c) For purposes of this section, a "violation of this article" shall include, but not be limited to:

(1) the discharge of pollutants without an NPDES permit or in violation of any effluent limitation in an NPDES permit;

(2) the violation of any other term or condition of an NPDES permit;

(3) failure to comply with NPDES application requirements under section 3 of this rule or 327 IAC 5-3; or

(4) failure to allow entry, inspection, and monitoring by the commissioner when

requested in accordance with applicable law or to carry out monitoring, recording, and reporting required under this article.

(d) For violations of a permit for storm water runoff associated with construction activity, the department shall investigate potential violations of the permit to determine which person may be responsible for the violation. The department shall, if appropriate, consider public records of ownership, building permits issued by local units of government, and other relevant information, which may include site inspections, storm water pollution prevention plans, notices of intent, and other information related to the specific facts and circumstances of the potential violation. *(Water Pollution Control Division; 327 IAC 5-2-20; filed Sep 24, 1987, 3:00 p.m.: 11 IR 632; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756)*

SECTION 20. 327 IAC 5-2-22 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-2-22 Signatories to permit applications and reports

Authority: IC 13-1-3-4; IC 13-1-3-7; IC 13-7-7; IC 13-7-10-1

Affected: IC 13-1-3; IC 13-7

Sec. 22. (a) All permit applications shall be signed as follows:

(1) ~~The following~~ For a corporation by a responsible corporate officer. ~~(A) For purposes of this section, "a responsible corporate officer" means either of the following:~~

(i) ~~(A)~~ A president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policymaking or decision making functions for the corporation.

(ii) ~~(B)~~ The manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) ~~(in second quarter 1980 dollars)~~; **if provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty to make major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where** authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~(B) For purposes of this section, a principal executive officer of a federal agency includes the following:~~

~~(i) The chief executive officer of the agency.~~

~~(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.~~

(2) For a partnership or sole proprietorship by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency or political subdivision thereof by either a principal executive officer or ranking elected official. **For purposes of this section, a principal executive officer of a federal agency includes:**

(A) the chief executive officer of the agency; or

(B) a senior executive officer having responsibility for the overall operations

of a principal geographic unit of the agency (for example, Regional Administrators of EPA).

(4) Permit applicants who meet the criteria set forth in this subsection may also be required to utilize agency-approved electronic application mechanisms in lieu of paper NPDES applications.

(b) All reports required by permits and other information requested by the commissioner shall be signed by a person described in subsection (a), or by a duly authorized representative of that person. A person is a duly authorized representative only if the authorization meets the following requirements:

- (1) The authorization is made in writing by a person described in subsection (a).
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)
- (3) The written authorization is submitted to the commissioner.

(c) If an authorization under subsection (b) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subsection (b) must be submitted to the commissioner prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Any person signing a document under subsection (a) or (b) shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(Water Pollution Control Division; 327 IAC 5-2-22; filed Sep 24, 1987, 3:00 p.m.: 11 IR 633; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1756)

SECTION 21. 327 IAC 5-3-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-8 Fact sheet

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 8. (a) **The department shall prepare** a fact sheet ~~shall be prepared~~ for every draft permit for a major discharger, any draft permit that incorporates a statutory variance or modification or requires explanation under subsection (b)(5), general permits, and every draft permit that the commissioner finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the major facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The

commissioner shall send this fact sheet to the following:

- (1) The applicant.
- (2) EPA Region 5.
- (3) The district engineer of the Corps of Engineers.
- (4) The regional director of the U.S. Fish and Wildlife Service.
- (5) Other interested state and federal agencies.
- (6) Any other person on request.
- (7) All persons on a mailing list for receipt of fact sheets (see section 12(g) of this rule).

Any of these persons may waive their right to receive a fact sheet for any classes and categories of permits.

(b) The fact sheet shall include the following:

- (1) A brief description of the type of facility or activity that is the subject of the draft permit and, where appropriate, a sketch or detailed description of the discharge described in the application.
- (2) A description of the type and quantity of pollutants that are, or are proposed to be, discharged.
- (3) A brief explanation of the express statutory or regulatory provisions on which permit requirements are based.
- (4) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable guideline or development documents or standard provisions as required under 327 IAC 5-2-10 and reasons why they are applicable or an explanation of how alternate effluent limitations were developed.
- (5) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - (A) Technology-based limitations to control toxic pollutants under 327 IAC 5-2-10.
 - (B) Limitations on internal waste streams in accordance with 327 IAC 5-2-11(h).
 - (C) Limitations on indicator pollutants under 327 IAC 5-2-10(6) and 327 IAC 5-5-2(f).
 - (D) Limitations allowing an increase in the discharge of any pollutant, including an explanation that satisfies the requirements of 327 IAC 5-2-10(11) and the antidegradation requirements of 327 IAC 2-1, 327 IAC 2-1.3, and 327 IAC 2-1.5.
 - (E) Limitations implementing a variance from water quality standards under 327 IAC 2-1-8.8 or 327 IAC 2-1.5-17 and section 4.1 of this rule.
- (6) Reasons why requested variances or modifications from otherwise required effluent limitations do or do not appear justified.
- (7) Name and telephone number of a departmental contact person who can provide additional information.
- (8) Any information, not otherwise specified herein, required under ~~section 12 or 12.1~~ section 12.1 ~~of this rule.~~ **327 IAC 5-2-12 or 327 IAC 5-2-12.1.**

(Water Pollution Control Division; 327 IAC 5-3-8; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1761; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1472; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; filed May 29, 2012, 3:19 p.m.: 20120627-IR-327080764FRA)

SECTION 22. 327 IAC 5-3-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-9 Public comments and public hearings**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3**Affected:** IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 9. (a) A comment period of at least thirty (30) days following the date of public notice of the formulation of a draft permit shall be provided. During this period any interested persons may submit written comments on the draft permit and may request a public hearing in accordance with subsection (b). All comments, including those submitted in a public hearing, shall be considered by the commissioner in preparing the final permit and shall be responded to as provided in 327 IAC 5-3-15.

(b)(1) A public hearing on a draft permit may be held by the commissioner in appropriate cases, either on the commissioner's own initiative or in response to a request or requests for public hearing submitted during the public comment period. ~~Such~~ **A public hearing and a request to hold one shall meet the following:**

- (1) **The public hearing shall** be held where the commissioner finds there is a significant public interest in the draft permit. Instances of doubt will be resolved in favor of holding a hearing. Public notice of a public hearing shall be given as specified in 327 IAC 5-3-12.
- (2) A request for a public hearing shall be in writing and shall state the nature of the issues to be raised and the reasons why a hearing is warranted.
- (3) Any hearing conducted pursuant to this section shall be held in the geographical area of the proposed discharge, or other appropriate area where significant public interest exists in the discretion of the commissioner, and may, when appropriate, consider two or more related draft permits.
- (4) Any person appearing at such a hearing may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. A hearing conducted under this section shall not constitute an "administrative adjudication" for purposes of IC 4-22-1 or IC 4-21.5.

(c) All persons, including the applicant, who believe any of the terms and conditions of a draft permit or a tentative decision to deny or terminate a permit is not appropriate for any reason, must raise all reasonably ascertainable issues and submit all arguments and a summary of the factual grounds supporting their position by the close of the public comment period (including any public hearing period).

(d) ~~Since a general permit is in the nature of rule, Public notice and opportunity for comment and public hearing of the a proposed issuance of a general permit must be given provided in accordance with statutorily prescribed procedures for administrative agency rulemaking as well as the provisions of this section and 327 IAC 5-3-12. section 12 of this rule. (Water Pollution Control Division; 327 IAC 5-3-9; filed Sep 24, 1987, 3:00 p.m.: 11 IR 638; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)~~

SECTION 23. 327 IAC 5-3-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-12 Public notice of comment period; public hearings concerning permit determinations**Authority:** IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 12. (a) Notice of every proposed determination on a permit issuance or denial and of a public hearing concerning such a proposed determination shall be circulated in a manner designed to inform interested persons. Notice of a proposed permit determination shall allow at least thirty (30) days for public comment, as specified in section 9 of this rule, and notice of a public hearing shall be given at least thirty (30) days before the hearing.

(b) Public notices required by subsection (a) shall be given by the commissioner as follows:

(1) By ~~mailing~~ **transmitting** a copy by ~~certified mail, return receipt requested,~~ to the applicant, to EPA, and to the U.S. Army Corps of Engineers, ~~and by regular first class mail~~ to federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources (including the U.S. Fish and Wildlife Service and the Indiana department of natural resources), to other appropriate governmental authorities including any affected state, to any person on request, and to all persons on a mailing list for receipt of such notices.

(2) By publication of a notice in a daily or weekly newspaper in general circulation throughout the area affected by the discharge or, at the commissioner's discretion, by any other method reasonably calculated to give actual notice of the proposed permit action to persons potentially affected by it, including the use of press releases or by posting a copy of the information required under subsection (c) at the principal office of the municipality or political subdivision affected by the facility or discharge. ~~and at the United States post office serving those premises.~~

Any person otherwise entitled to receive notice under subdivision (1) may waive the right to receive notice for any classes and categories of permits.

(c) All public notices issued under this section shall contain the following information:

(1) Name and address of this department.

(2) Except in the case of general permits, name and address of the applicant and the discharger (if different from the applicant) and a general description of the location of each existing or proposed discharge point, including the receiving water.

(3) A brief description of the applicant's activities or operations that result in the discharge described in the application, and a statement whether the application pertains to a new or existing discharge.

(4) A brief description of the tentative permit determination, e.g., to issue, deny, modify, revoke and reissue, terminate the permit, or grant or deny a request for variance from applicable water quality standards, in accordance with section 4.1 of this rule.

(5) If the applicant has properly applied under Section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** for a thermal variance, a statement to that effect. The notice shall state that all data submitted by the applicant are available as part of the administrative record for public inspection during office hours. The notice shall also include the following:

(A) A brief description, including a quantitative statement, of the thermal effluent limitations proposed under Section 301 or 306 of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1311 or 33 U.S.C. 1316).**

(B) A statement that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) of the ~~CWA~~ **Clean Water Act (33 U.S.C. 1326(a))** and a brief description, including a

quantitative statement, of the alternative effluent limitations, if any, included in the application.

(C) If the applicant has filed an early screening application for a **CWA Clean Water Act** Section 316(a) (**33 U.S.C. 1326(a)**) variance under 327 IAC 5-7-3, a statement that the applicant has submitted such a plan.

(6) A brief description of the comment procedures provided under section 9 of this rule and a statement of the right and procedures to request a public hearing.

(7) Name of a contact person, and an address and telephone number where interested persons may obtain further information, including copies of the draft permit and the statement of basis or fact sheet.

(d) Notice of the formulation of a draft general permit and the issuance of a final general permit under ~~section 15 of this rule~~ **327 IAC 15** shall:

(1) meet the requirements of subsection (c) and shall also include:

(A) a brief description of the types of activities or operations to be covered by the general permit;

(B) a map or description of the general permit boundary; and

(C) the basis for choosing the general permit boundary; ~~and~~

(2) be published **on the IDEM website and** in the ~~Indiana Register~~ and in one (1) or more daily or weekly newspapers in general circulation within the general permit boundaries; **and**

(3) comply with the public notice requirements in 40 CFR 123.25(a)(28).

In addition to the publication required by ~~subdivision~~ **subdivisions (2) and (3)**, the commissioner shall use all other reasonable means to notify affected dischargers of the draft and final general permit, including the ~~mailing~~ **transmitting** of a copy of such notice to those permittees which are affected.

(e) In addition to the information required under subsection (c), public notice of a public hearing held under section 9 of this rule shall contain the following information:

(1) Reference to the date and identification number of the public notice of the draft permit.

(2) Date, time, and place of the hearing.

(3) A brief description of the nature and purpose of the hearing including the applicable rules and procedures.

(f) The commissioner, at the commissioner's discretion, may include in any notice of a tentative permit determination under subsection (c) a notice of hearing in accordance with subsection (e), whether or not any request for such hearing shall have been submitted to him **or her**.

(g) The mailing lists referred to in subsection (b)(1) and in section 8(a) of this rule ~~consists~~ **consist** of those persons who request to be on the list to receive copies of all public notices. ~~or fact sheets, respectively, or both.~~ Such a request shall be made in writing to the department and shall be renewed annually in the month of January. Failure to renew the request will be cause for the commissioner to remove a name from the appropriate mailing list. Availability of the mailing lists will be publicized periodically through press releases and notices in the Indiana Register, **IDEM website**, or other appropriate publications. The commissioner may establish regional mailing lists in addition to or in place of a statewide list. *(Water Pollution Control Division; 327 IAC 5-3-12; filed Sep 24, 1987, 3:00 p.m.: 11 IR 639; filed Feb 26, 1993,*

5:00 p.m.: 16 IR 1761; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)

SECTION 24. 327 IAC 5-3-14 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3-14 Issuance and effective date of a permit

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 4-21.5-3-7; IC 13-11-2; IC 13-15; IC 13-18-3-15; IC 13-18-4

Sec. 14. (a) After the close of:

(1) the public comment period (including any public hearing) required by section 9 9(a) of this rule on a draft permit; **and**

(2) **any public hearing held under section 9(b) of this rule;**

the commissioner, except as provided in subsection (c), shall issue a final permit decision and shall serve notice of that action on the applicant and on each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures available to contest the permit terms by requesting an adjudicatory hearing. For the purposes of this section, "final permit decision" means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) Issuance of a general permit shall be accomplished by the publication of the full text of the permit ~~in the Indiana Register~~ **on the IDEM website** and the notification specified under section 12(d) of this rule, in addition to the notification required by subsection (a).

(c) The commissioner may delegate authority to a staff member to issue or deny NPDES permits to applicants within a specified class or category of ~~point sources~~ **discharges**. Within the scope of any such delegation, a reference in this rule to the commissioner shall also mean the commissioner's delegatee.

(d) A final permit decision shall become effective with respect to the applicant unless, within fifteen (15) days after receipt of notice of said decision, the applicant files a request for adjudicatory hearing concerning the permit decision with the commissioner in accordance with ~~IC 13-7-10-2.5(e)~~ **IC 13-15-16-1** and IC 4-21.5-3-7.

(e) If an adjudicatory hearing request concerning a final permit decision is granted by the board pursuant to ~~IC 13-7-10-2.5(e)~~, **IC 13-15-6-3**, any permit provisions that are stayed by order of the board shall not go into effect until confirmed at the final resolution of the hearing or until the board otherwise dissolves the stay. Any permit provisions not stayed by the board in such a proceeding remain effective and in full force.

(f) Where permit provisions are stayed during an adjudicatory proceeding on a renewal permit for an existing source, all provisions of the previous permit which correspond to the stayed provisions of the new permit and which are consistent with those provisions of the new permit that are not stayed shall continue in full force and effect until a final resolution of the adjudicatory proceeding. However, this subsection shall not apply if a timely and sufficient application for the renewal permit was not submitted in accordance with ~~IC 13-7-10-2(e)~~. **IC 13-15-3-6.** (Water Pollution Control Division; 327 IAC 5-3-14; filed Sep 24, 1987, 3:00 p.m.: 11 IR 641; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1762; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)

SECTION 25. 327 IAC 5-3.5-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-3.5-9 PMPP requirements

Authority: IC 13-13-5-1; IC 13-13-5-2; IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18

Affected: IC 13-18-3-15; IC 13-18-4; IC 13-20-17.5

Sec. 9. (a) A PMPP for a facility must be submitted with an application for an SMV. The PMPP must contain the following:

(1) Results of a preliminary inventory of potential uses and sources of mercury in all buildings and departments and a plan and schedule for providing the department results of a complete inventory.

(2) Preliminary identification of known mercury-bearing equipment, wastestreams, and mercury storage sites.

(3) A list of planned activities to be conducted to eliminate or minimize the release of mercury to the water. The list of planned activities may consider technical and economic feasibility and must include, at a minimum, the following:

(A) A review of purchasing policies and procedures.

(B) Necessary training and awareness for facility staff.

(C) Evaluation of alternatives to the use of any mercury-containing equipment or materials.

(D) Other specific activities designed to reduce or eliminate mercury loadings.

(E) An identification of the facility's responsibilities under ~~P.L. 225-2001~~ (also known as House Enrolled Act 1901 of the 2001 legislative session). **IC 13-20-17.5.**

(4) For each activity specified in subdivision (3), the plan must contain the following:

(A) The goal to be accomplished.

(B) A measure of performance.

(C) A schedule for action.

(5) All available mercury monitoring data and any information on mercury in biosolids, if required by an NPDES permit or land application permit, for the two (2) year period preceding the SMV application.

(6) Identification of the resources and staff necessary to implement the PMPP.

(7) Proof of completion of public notice activities required under this section.

(8) Annual reports according to a schedule in the PMPP. Each annual report must describe the following:

(A) The facility's progress toward fulfilling each of the requirements of the PMPP.

(B) The results of mercury monitoring.

(C) The steps taken to implement each planned activity developed under this subsection and subsection (b) to reduce or eliminate mercury from the facility's water.

(b) In addition to subsection (a), a PMPP for a POTW must include the following:

(1) Results of a preliminary evaluation of possible mercury sources in the facility's influent and a plan and schedule for providing the department results of a complete evaluation. The evaluation shall include, at a minimum, the following:

(A) Medical facilities, for example, the following:

- (i) Hospitals.
 - (ii) Clinics.
 - (iii) Nursing homes.
 - (iv) Veterinary facilities.
 - (B) Dental clinics.
 - (C) Public and private educational laboratories.
 - (D) General industry and all SIUs.
 - (E) Significant sources of residential and retail contributions of mercury, for example, the following:
 - (i) Heating, ventilation, and air conditioning contractors.
 - (ii) Automobile and appliance repair.
 - (iii) Veterinarians.
 - (iv) Others specific to the community served.
 - (F) An identification of the responsibilities under ~~P.L. 225-2001 (also known as House Enrolled Act 1901 of the 2001 legislative session)~~ **IC 13-20-17.5** for the significant industrial users for the POTW.
 - (2) A list of planned activities designed to reduce or eliminate mercury loadings from the sources identified in subdivision (1).
 - (3) For each activity specified in subdivision (2), the plan must contain the following:
 - (A) The goal to be accomplished.
 - (B) A measure of performance.
 - (C) A schedule for action.
 - (4) In addition to activities required under subsection (a)(3), activities must also include an education program for the facility employees and the public within the service area of the facility.
- (c) Prior to submitting the PMPP to the department as part of the SMV application, an applicant shall do the following:
- (1) Publish notice of the availability of the draft PMPP in a daily or weekly newspaper of general circulation throughout the area affected by the discharge.
 - (2) Post a copy of the information required by this section at the following:
 - (A) Principal office of the municipality or political subdivision affected by the facility or discharge.
 - (B) The United States post office.
 - (C) If one is available, the library serving those premises.
 - (d) All notices published under this section shall contain the following information:
 - (1) The name and address of the applicant that prepared the PMPP.
 - (2) A general description of the elements of the PMPP.
 - (3) A brief description of the activities or operations that result in the discharge for which an SMV is being requested.
 - (4) A brief description of the purpose of this notice and the comment procedures.
 - (5) The name of a contact person, a mailing address, an internet address, if available, and a telephone number where interested persons may obtain additional information and a copy of the PMPP.
 - (e) The applicant shall do the following:
 - (1) Provide a minimum comment period of thirty (30) days.
 - (2) Include a copy of the comments received and the applicant's responses to those

comments in the SMV application submitted to the department.

(f) The department shall consider a PMPP to be complete if it meets the requirements of this section. *(Water Pollution Control Division; 327 IAC 5-3.5-9; filed Apr 6, 2005, 4:00 p.m.: 28 IR 2351; readopted filed Jun 15, 2011, 11:15 a.m.: 20110713-IR-327110193BFA)*

SECTION 26. 327 IAC 5-4-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-4-5 Aquaculture projects

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 5. Discharges into ~~aequa~~**aquaculture** ~~projects~~, as defined in 40 CFR 122.25, are subject to the NPDES permit program in accordance with the criteria specified in 40 CFR Part 125, Subpart B. *(Water Pollution Control Division; 327 IAC 5-4-5; filed Sep 24, 1987, 3:00 p.m.: 11 IR 643)*

SECTION 27. 327 IAC 5-4-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-4-6 Storm water discharges

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1

Affected: IC 13-18-4

Sec. 6. (a) The following discharges consisting entirely of storm water require an individual NPDES permit:

(1) A discharge that the commissioner determines:

(A) contributes to a violation of a water quality standard;

(B) is a significant contributor of pollutants to waters or to a regulated municipal separate storm sewer system (MS4) conveyance; or

(C) meets **any** of the conditions of ~~one (1) of the six (6) cases~~ listed in 327 IAC 15-2-9(b). **327 IAC 15-2-9(a).**

(2) A discharge with respect to which a permit has been issued prior to February 4, 1987.

(3) A discharge that is subject to federal storm water effluent limitation guidelines unless the effluent limitations are placed in a general permit under 327 IAC 15.

(4) A discharge associated with the state department of transportation.

(5) A discharge from an MS4 conveyance subject to regulation under 40 CFR 122.26(a)(iii) or 40 CFR 122.26(a)(iv).

(b) The following Discharges consisting **described in 327 IAC 15-2-2 that consist** entirely of storm water require an NPDES permit and are eligible for coverage under a general NPDES permit unless ~~one (1) any~~ of the conditions in subsection (a) is **for issuance of an individual permit** are met.

(1) A discharge exposed to categories of industrial activity specified in 327 IAC 15-6-2.

(2) A discharge associated with construction activities, which disturb ~~one (1) or more~~ acres of land. Included in these activities are disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) or more acres of land.

(3) A discharge from an MS4 conveyance that meets the designation criteria in 327 IAC 15-13-3(a) or 327 IAC 15-13-3(b).

(c) The commissioner shall not, under this section, require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including, but not limited to, pipes, conduits, ditches, and channels, used for collecting and conveying precipitation run-off and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations. **any of the following:**

- (1) Agricultural storm water runoff or return flows from irrigated agriculture.**
- (2) Storm water discharges from mining operations composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation runoff that has not come into contact with any overburden, raw material, intermediate products, finished product, byproducts, or waste products located on the site of the operations. Conveyances include pipes, conduits, ditches, and channels.**
- (3) Storm water discharges from oil and gas exploration field activities or operations associated with oil and gas exploration, production, processing or treatment operations or transmission facilities, including activities necessary to prepare a site for drilling and the movement and placement of drilling equipment.**

(d) If an individual NPDES permit is required under subsection (a) **for discharges consisting entirely of storm water, or if an individual permit is required under 327 IAC 5-2-2 that includes discharge of commingled storm water associated with industrial activity**, the department may consider the following in determining the requirements to be contained in the permit:

- (1) The provisions in **the following:**
 - (A) 327 IAC 15-5, 327 IAC 15-6, and 327 IAC 15-13, as appropriate to the type of storm water discharge. **or**
 - (B) NPDES Pesticide General Permit for Point Source Discharges to Waters of the State from the Application of Pesticides, Permit Number ING870000, effective October 31, 2011, available at:**
http://www.in.gov/idem/files/npdes_permit_pesticide_final_permit.pdf
or from the IDEM Office of Water Quality, Permits Branch, 100 North Senate Avenue, Indianapolis, IN 46204-2251.
 - (B) (C) 327 IAC 5-2, 327 IAC 5-5, and 327 IAC 5-9 for establishing NPDES permit effluent limitations and conditions.**
- (2) The United States Environmental Protection Agency guidance document titled "Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits", **EPA 833-D-96-001, September 1, 1996*, 1996, available from U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242-0419 or from the department.**
- (3) The nature of the discharges and activities occurring at the site or facility.
- (4) Other information relevant to the potential impact on water quality.

(e) Storm water runoff discharged into a combined sewer system is not subject to the provisions of this section.

(f) Whether a discharge from an MS4 conveyance is, subject to regulation under this section, shall have no bearing on whether the owner or operator of the discharge is eligible for

funding under Title II, Title III, or Title VI of the CWA. **Clean Water Act.**

(g) Terms, as used in this section, have the same meaning as defined under 40 CFR 122.26(b), 327 IAC 15-5-4, 327 IAC 15-6-4, or 327 IAC 15-13-5, unless defined as follows:

- (1) "General NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to all owners and operators of point sources of a particular category located within a designated general permit boundary, other than owners and operators of such sources to whom individual NPDES permits have been issued.
- (2) "Individual NPDES permit" means an authorization to discharge under the NPDES rules, that is applicable to an individual owner or operator of point sources, and establishes requirements specific for that owner or operator.

*Copies of the United States Environmental Protection Agency guidance document referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 5-4-6; filed Sep 24, 1987, 3:00 p.m.: 11 IR 644; filed Feb 26, 1993, 5:00 p.m.: 16 IR 1764; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3575; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936*)

SECTION 28. 327 IAC 5-16-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-16-1 Purpose and objectives

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-3-15; IC 13-18-4

Sec. 1. (a) The pretreatment rules establish a state program to control the discharge of industrial pollutants into publicly owned treatment works (POTWs), as defined in 327 IAC 5-1.5-48, to implement 40 CFR 403 and related provisions of the federal Clean Water Act, 33 U.S.C. 1251.

(b) The state pretreatment program has the following three (3) objectives:

- (1) To prevent the introduction of pollutants into a POTW that will interfere with the operation of a POTW, including interference with the use or disposal of municipal sludge.
- (2) To prevent the introduction of pollutants into a POTW that will pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works.
- (3) To improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

(c) The pretreatment rules apply to:

- (1) new or existing industries that discharge by direct connection or indirectly by truck, rail, or other means, nondomestic wastes into POTWs; and
- (2) POTWs that receive or may receive discharges of nondomestic wastes from those industries.

(d) Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations in the pretreatment rules refers to the July 1, 1999, revision. (*Water Pollution*

Control Division; 327 IAC 5-16-1; filed Oct 10, 2000, 3:02 p.m.: 24 IR 290)

SECTION 29. 327 IAC 5-16-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-16-5 Reporting requirements for POTWs and industrial users

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18

Sec. 5. (a) All POTWs and industrial users shall comply with the applicable reporting requirements of ~~40 CFR 403.12*~~. **40 CFR 403.12.**

(b) The reporting requirements for an industrial user upon the effective date of a categorical pretreatment standard are as follows:

(1) An existing industrial user subject to the categorical pretreatment standards and currently discharging to or scheduled to discharge to a POTW shall submit to the control authority a baseline report that contains the information listed in subsection (c) within one hundred eighty (180) days after the:

(A) effective date of a categorical pretreatment standard; or

(B) final administrative decision made upon a category determination submission under 40 CFR 403.6(a)(4);

whichever is later.

(2) A new source, and a source that becomes an industrial user subsequent to the promulgation of an applicable categorical standard, shall be required to submit to the control authority a report that contains the information listed in subsection (c)(1) through (c)(5), at least ninety (90) days prior to commencement of discharge.

(3) A new source shall:

(A) also be required to include in this report information on the method of pretreatment the source intends to use to meet applicable pretreatment standards; and

(B) give estimates of the information requested in subsection (c)(4) and (c)(5).

(c) The baseline monitoring report submitted by the industrial user to the POTW must include the following information:

(1) The name and address of the facility, including the name of the operator and owners.

(2) A list of any environmental control permits held by or for the facility.

(3) A brief description of the operation, including:

(A) the nature;

(B) the average rate of production; and

(C) the standard industrial classification;

of the operation or operations carried out by the industrial user. This description must include a schematic process diagram that indicates points of discharge to the POTW from the regulated processes.

(4) Measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(A) Regulated process streams.

(B) Other streams, as necessary, to allow use of the combined waste stream formula of subdivision (6)(C).

The control authority may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

- (5) The pretreatment standards applicable to each regulated process.
- (6) The results of sampling and analysis, identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. The following apply to sampling and analysis results:
- (A) Both daily maximum and average concentration (or mass, where required) must be reported. The sample must be representative of daily operations. In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation as required by the control authority or the applicable standards to determine compliance with the standard.
 - (B) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this subdivision.
 - (C) Samples must be taken immediately downstream from existing pretreatment facilities, or immediately downstream from the regulated process, if no pretreatment facilities exist. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user shall measure the flows and concentrations necessary to allow use of the combined waste stream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit, along with supporting data, must be submitted to the control authority.
 - (D) Sampling and analysis must be performed in accordance with the techniques prescribed in 40 CFR Part 136. and amendments thereto. Where:
 - (i) 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question; or
 - (ii) the administrator determines that the ~~Part 40 CFR 136~~ **40 CFR 136** sampling and analytical techniques are inappropriate for the pollutant in question;
 sampling and analysis must be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.
 - (E) The control authority may allow the submission of a baseline report that utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
 - (F) The baseline report allowed under clause (E) must:
 - (i) indicate:
 - (AA) the time;
 - (BB) the date;
 - (CC) the place of sampling; and
 - (DD) the methods of analysis; and
 - (ii) certify that the sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (7) The industrial user shall submit a certification statement indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O and M) or additional pretreatment, or both, is required for the industrial user to meet the pretreatment standards and requirements. The statement must be:
- (A) reviewed by an authorized representative of the industrial user, as defined in

section 5.3 of this rule; and

(B) certified by a qualified professional.

(8) The industrial user shall use the shortest compliance schedule by which additional pretreatment or O and M, or both, may be provided if required to meet the pretreatment standards. The completion date in this schedule must not be later than the compliance date established for the applicable pretreatment standard.

(9) Where the industrial user's categorical pretreatment standard has been modified by a removal allowance under 40 CFR 403.7, the combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, at the time the industrial user submits the report required by subsection (b), the information required by subdivisions (7) and (8) shall apply to the modified limits.

(10) If the categorical pretreatment standard is modified by a removal allowance under 40 CFR 403.7, combined waste stream formula under 40 CFR 403.6(e), or a fundamentally different factors variance under 40 CFR 403.13, after the industrial user submits the report required by subsection (b), any necessary amendments to the information required by subdivisions (7) and (8) must be submitted by the industrial user to the control authority within sixty (60) days after the modified limit is approved.

(d) The following conditions apply to the compliance schedule for meeting categorical pretreatment standards required by subsection (c)(8):

(1) The schedule must contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards, for example, the following:

- (A) Hiring an engineer.
- (B) Completing preliminary plans.
- (C) Completing final plans.
- (D) Executing a contract for major components.
- (E) Commencing construction.
- (F) Completing construction.

(2) No increment established in subdivision (1) may exceed nine (9) months.

(3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the control authority, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the following:

- (A) The date on which it expects to comply with this increment of progress.
- (B) The reason for delay.
- (C) The steps being taken by the industrial user to return the construction to the schedule established.

In no event may more than nine (9) months elapse between the progress reports to the control authority.

(e) Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following the introduction of wastewater into the POTW, an industrial user shall do the following:

(1) An industrial user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in subsection (c)(4) through (c)(6).

(2) For an industrial user subject to equivalent mass or concentration limits established by

the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required under subdivision (1) must contain a reasonable measure of the industrial user's long-term production rate.

(3) For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required under subdivision (1) must include the industrial user's actual production during the appropriate sampling period.

(f) This subsection does not apply to nonsignificant categorical users as defined in 40 CFR 403.3(v)(2). An industrial user subject to a categorical pretreatment standard, after the compliance date of the pretreatment standard or, in the case of a new source, after commencement of the discharge into the POTW, shall submit a periodic compliance monitoring report to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the approval authority. The periodic compliance monitoring report shall contain the following:

(1) The monitoring report must include the following:

(A) A report indicating the nature and concentration of pollutants in the effluent that are limited by the categorical pretreatment standards.

(B) A record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in subsection (c)(4), except that the control authority may require more detailed reporting of flows if necessary to determine the industrial user's compliance with applicable regulations.

(2) When a pretreatment standard requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority or the pretreatment standard necessary to determine the compliance status of the industrial user. At the discretion of the control authority and in consideration of factors including local high or low flow rates, holidays and budget cycles, the control authority may modify the months during which the reports required under subdivision (1) are to be submitted.

(3) The control authority may grant an industrial user subject to a categorical pretreatment standard a waiver from sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated thorough sampling and other technical factors that the pollutant is neither present nor expected to be present in the discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the industrial user. This waiver is subject to the following conditions:

(A) The control authority may authorize a waiver where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility, provided that the sanitary wastewater is not regulated by an applicable categorical standard and otherwise includes no process wastewater.

(B) The monitoring waiver is valid only for the duration of the effective period of the permit or other equivalent individual control mechanism, but in no case longer than five (5) years. The industrial user shall submit a new request for a waiver before the waiver can be granted for each subsequent control mechanism.

(C) In making a demonstration that a pollutant is not present, the industrial user shall provide data from at least one (1) sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes. The request for a monitoring waiver must be signed in accordance with section 5.3 of this rule and include the certification

statement in ~~40 CFR 403.6(a)(2)(ii)**~~. **40 CFR 403.6(a)(2)(ii)**. Nondetectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136, with the lowest minimum detection level for that pollutant, was used in the analysis.

(D) Any grant of a monitoring waiver by the control authority must be included as a condition in the industrial user's control mechanism. The reasons supporting the waiver and any information submitted by the industrial user in its request for the waiver must be maintained by the control authority for three (3) years after expiration of the waiver.

(E) Upon approval of the monitoring waiver and revision of the industrial user's control mechanism by the control authority, the industrial user shall certify on each report that there has been no increase in the pollutant in its waste stream due to activities of the industrial user. The statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR (specify applicable National Pretreatment Standard part(s)), I certify that, to the best of my knowledge and belief, there has been no increase in the level of (list pollutant(s)) in the wastewaters due to the activities at the facility since filing of the last periodic report under 40 CFR 403.12(e)(1)."

(F) In the event that a waived pollutant is found to be present or is expected to be present based on changes that occur in the industrial user's operations, the industrial user shall immediately notify the control authority and comply with:

- (i) the monitoring requirements of subdivisions (1) and (2); or
- (ii) other more frequent monitoring requirements imposed by the control authority.

(G) This subdivision does not supersede certification processes and requirements established in **federal** categorical pretreatment standards at ~~327 IAC 5-18-10~~, **incorporated by reference in 327 IAC 5-2-1.5**, except as otherwise specified in the categorical pretreatment standard.

(4) Where the control authority has imposed mass limitations on industrial users as provided for by 40 CFR 403.6(d), the report required by this subsection must indicate the mass of pollutants regulated by pretreatment standards in the discharge from the industrial user.

(5) For industrial users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in 40 CFR 403.6(c), the report required by this subsection must contain a reasonable measure of the industrial user's long-term production rate. For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production, or other measure of operation, the report required by this subsection must include the industrial user's actual average production rate for the reporting period.

(g) All categorical and noncategorical industrial users shall notify the POTW immediately of all discharges that could cause problems to the POTW, including any slug loadings, as defined by ~~40 CFR 403.5(b)***~~. **40 CFR 403.5(b)**.

(h) Industrial users shall continue monitoring and analysis to demonstrate continued compliance, including the following:

- (1) Except for nonsignificant categorical users, the reports required in subsections (b), (c), (e), (f), and (i) must contain the results of sampling and analysis of the discharge,

including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein that are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the industrial user. Where the POTW performs the required sampling and analysis in lieu of the industrial user, the industrial user will not be required to submit the compliance certification required under subsections (c)(7) and (e). In addition, where the POTW collects all the information required for the report, including flow data, the industrial user will not be required to submit the report.

(2) If sampling performed by an industrial user indicates a violation, the industrial user shall notify the control authority within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within thirty (30) days after becoming aware of the violation. Where the control authority has performed the sampling and analysis in lieu of the industrial user, the control authority shall perform the repeat sampling and analysis unless it notifies the industrial user of the violation and requires the industrial user to perform the repeat analysis. Resampling is not required if the control authority performs sampling at the industrial user:

- (A) at a frequency of at least once per month; or
- (B) between the time when the initial sampling was conducted and the time when the industrial user or the control authority receives the results of this sampling.

(3) The reports required in subsections (b) through (e) and (i) must be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements. Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, twenty-four (24) hour composite samples must be obtained through flow proportional composite sampling techniques, unless time proportional composite sampling or grab sampling is authorized by the control authority. Where time-proportional composite sampling or grab sampling is authorized by the control authority, the samples must be representative of the discharge and the decision to allow the alternative sampling must be documented in the industrial user file for that facility or facilities. Using protocols, including appropriate preservation, specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a twenty-four (24) hour period may be composited prior to the analysis as follows:

- (A) For cyanide, total phenols, and sulfides, the samples may be composited in the laboratory or in the field.
- (B) For volatile organics and oil and grease, the samples may be composited in the laboratory.
- (C) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the control authority, as appropriate.

(4) For sampling required in support of baseline monitoring and ninety (90) day compliance reports required in subsections (b) and (e), a minimum of four (4) grab samples must be used for:

- (A) pH;
- (B) cyanide;
- (C) total phenols;

- (D) oil and grease;
- (E) sulfide; and
- (F) volatile organic compounds;

for facilities for which historical sampling data do not exist. For facilities for which historical sampling data are available, the control authority may authorize a lower minimum. For the reports required by subsections (e) and (i), the control authority shall require the number of grab samples necessary to assess and assure compliance by industrial users with applicable pretreatment standards and requirements.

(5) All analyses must be performed in accordance with procedures established by the commissioner pursuant to 33 U.S.C. 1314(h) and contained in ~~40 CFR Part 136****~~ **40 CFR 136** or with any other test procedures approved by the commissioner. Sampling must be performed in accordance with the techniques approved by the commissioner.

Where:

(A) ~~40 CFR Part 136~~ does not include sampling or analytical techniques for the pollutants in question; or

(B) the commissioner determines that the ~~Part 136~~ **40 CFR 136** sampling and analytical techniques are inappropriate for the pollutant in question;

sampling and analyses must be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the commissioner.

(6) If an industrial user subject to the reporting requirement in subsection (f) or (i) monitors any regulated pollutant at the appropriate sampling location more frequently than required by the control authority, using the procedures prescribed in subdivision (5), the results of this monitoring must be included in the report.

(i) The reporting requirements for industrial users not subject to categorical pretreatment standards are as follows:

(1) Significant noncategorical industrial users shall submit to the control authority, at least once every six (6) months, on dates specified by the control authority, a description of the:

- (A) nature;
- (B) concentration; and
- (C) flow;

of the pollutants required to be reported by the control authority.

(2) In cases where a local limit requires compliance with a best management practice or pollution prevention alternative, the industrial user shall submit documentation required by the control authority to determine the compliance status of the industrial user. These reports must be based on sampling and analysis performed in the period covered by the report and in accordance with the techniques described in ~~40 CFR Part 136. and amendments thereto.~~

(3) This sampling and analysis may be performed by the control authority in lieu of the significant noncategorical industrial user.

(j) Additionally, reporting of:

- (1) spills into a POTW; or
- (2) upsets in pretreatment facilities;

may be required of an industrial user by its control authority.

*Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.12 is

incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

****Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.6(a)(2)(ii) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.**

*****Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.5(b) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.**

******Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR Part 136 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 5-16-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 291; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA*)**

SECTION 30. 327 IAC 5-16-5.3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-16-5.3 Additional reporting requirements for POTWs and industrial users

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-3-15; IC 13-18-4; IC 13-18-11

Sec. 5.3. (a) The reports required by 40 CFR 403.12 or 327 IAC 5-21-10 must be signed by one (1) of the following:

(1) A responsible corporate officer. As used in this section, "responsible corporate officer" means either of the following:

(A) A:

- (i) president;
- (ii) secretary;
- (iii) treasurer; or
- (iv) vice president;

of the corporation in charge of a principal business function or any other person who performs similar policymaking or decision making functions for the corporation.

(B) The manager of one (1) or more manufacturing, production, or operating facilities, provided the following:

(i) The manager is authorized to:

(AA) make management decisions that govern the operation of the regulated facility, including having the explicit or implicit duty of

making major capital investment recommendations; and
 (BB) initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations.

(ii) The manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements.

(iii) Authority to sign has been assigned or delegated to the manager to sign documents in accordance with corporate procedures.

(2) A general partner or proprietor or manager, if the industrial user submitting the reports is a partnership or sole proprietorship, respectively.

(3) A duly authorized representative of the individual designated in either subdivision (1) or (2) if:

(A) the authorization:

(i) is made in writing by the individual described in either subdivision (1) or (2); and

(ii) specifies either an individual or a position having responsibility for the overall operation of the facility from which the industrial discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(B) the written authorization is submitted to the control authority.

(4) If an authorization under subdivision (3) is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of subdivision (3) must be submitted to the control authority prior to or together with any reports to be signed by an authorized representative.

(b) An industrial user subject to the reporting requirements of section 5 of this rule and this section shall maintain records of the monitoring activities in accordance with 327 IAC 5-2-14, including documentation associated with best management practices. These records must be made available, upon request, to the:

(1) commissioner;

(2) regional administrator; and

(3) POTW to which the industrial user discharges its wastewater.

(c) A POTW to which reports are submitted by an industrial user under this section shall:

(1) retain the reports, including documentation associated with best management practices, for a minimum of three (3) years; and

(2) make the reports available for inspection and copying by the:

(A) commissioner; and

(B) regional administrator.

This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user, the operation of the approved POTW pretreatment, or when requested by the commissioner or the regional administrator.

(d) A report required by this section that relates to the actual operation of or discharge from a pretreatment facility must be prepared by or under the direction of a wastewater treatment

plant operator certified under IC 13-18-11.

(e) A report required of a POTW by 40 CFR 403.12 must be signed by a responsible corporate officer, ranking elected official, or other duly authorized employee. The duly authorized employee shall be an individual or position having responsibility for the overall operation of the facility or the pretreatment program. This authorization must be:

- (1) made in writing by the principal executive officer or ranking elected official; and
- (2) submitted to the approval authority prior to or together with the report being submitted.

If an employee is authorized to submit the reports, a copy of the written authorization designating the employee must be submitted to the commissioner.

(f) An industrial user who wishes to demonstrate the affirmative defense of upset for noncompliance with any pretreatment standard or requirement in 327 IAC 5-2 shall, as provided in 327 IAC 5-18-3, comply with the reporting requirements and conditions under section 6 of this rule.

(g) An industrial user shall report incidents of bypass or intent to bypass in accordance with section 7 of this rule.

(h) All industrial users shall promptly notify the:

- (1) control authority; and
- (2) POTW, if the POTW is not the control authority;

in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under subsection (j).

(i) A facility determined to be a nonsignificant categorical industrial user pursuant to 40 CFR 403.3(v)(2) shall annually submit a certification statement, signed in accordance with the signatory requirements in 40 CFR 403.12(l). This certification must accompany an alternative report required by the control authority. The certification statement must include the following:

"Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical pretreatment standards under 40 CFR ____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ (months, days, year):

- (a) The facility described as _____ (facility name) met the definition of a nonsignificant categorical industrial user as described in 40 CFR 403.3(v)(2);
- (b) the facility complied with all applicable pretreatment standards and requirements during this reporting period; and
- (c) the facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period. This compliance certification is based upon the following information."

(j) An industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and the commissioner in writing of any discharge into the POTW of a substance that, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. The notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge, for example, continuous, batch, or other. If the industrial user discharges more than one hundred (100) kilograms of the waste per

calendar month to the POTW, the notification must also contain the following information to the extent the information is known and readily available to the industrial user:

- (1) An identification of the hazardous constituents contained in the wastes.
- (2) An estimation of the mass and concentration of the constituents in the waste stream discharged during that calendar month.
- (3) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

All notifications must occur not later than one hundred eighty (180) days after the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification not later than one hundred eighty (180) days after the discharge of the listed or characteristic hazardous waste. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), 40 CFR 403.12(d), and 40 CFR 403.12(e).

(k) Dischargers are exempt from the requirements of this subsection and subsections (j) and (l) during a calendar month in which they discharge not more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than fifteen (15) kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e), requires a one (1) time notification.

(l) Subsequent months, during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.

(m) In the case of any notification made under subsections (j) through (l), the industrial user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(n) The control authority that chooses to receive electronic documents shall satisfy the requirements of ~~40 CFR Part 3***~~, **40 CFR Part 3**, electronic reporting.

*Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.12(l) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

**Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.12(j) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

***Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR Part 3 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government

Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 5-16-5.3; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA*)

SECTION 31. 327 IAC 5-18-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-4 National categorical pretreatment standards

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 4-22-2; IC 13-11-2; IC 13-13-5-1; IC 13-18-3-15; IC 13-18-4

Sec. 4. (a) General provisions for the categorical pretreatment standards are as follows:

- (1) Unless specifically noted otherwise, categorical pretreatment standards are:
 - (A) enforceable by the commissioner against an industrial user upon the incorporation by reference of the standards in section 10 of this rule in accordance with IC 4-22-2; and
 - (B) in addition to all applicable pretreatment standards and requirements in the pretreatment rules.
- (2) Irrespective of whether a particular categorical pretreatment standard has been incorporated by reference in section 10 of this rule, the commissioner may do the following:
 - (A) Make certifications regarding the applicability of that standard under subsection (b).
 - (B) Deny or recommend to EPA the approval of any request for a fundamentally different factors variance from that standard in accordance with section 5 of this rule.
 - (C) Recommend to the EPA the approval or disapproval of any application for calculation of that standard on a net basis in accordance with section 6 of this rule.

(b) The requirements concerning a request for a subcategory determination are as follows:

- (1) Within sixty (60) days after the effective date of a categorical pretreatment standard for a subcategory under which an industrial user may be included, the existing industrial user or POTW may request that the regional administrator or the commissioner provide written certification on whether the industrial user falls within that particular subcategory. If an existing industrial user adds or changes a process or operation that may be included in a subcategory, the existing industrial user must request this certification prior to commencing discharge from the added or changed processes or operations. A new source must request this certification prior to commencing discharge. If a request for certification is submitted by a POTW, the POTW shall notify any affected industrial user of the submission. The industrial user may provide written comments to the commissioner within thirty (30) days of receipt of notification from the POTW about the POTW's request for certification.
- (2) A request for certification must contain the following:
 - (A) A description of the subcategories that may be applicable.
 - (B) A statement citing evidence and reasons why a particular subcategory applies and why others are not applicable.

Any person signing the application statement submitted under this section shall make the signed certification, "I certify under penalty of law that this document and all attachments

were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(3) A determination will be made on each request for certification in accordance with the procedures specified in ~~40 CFR 403.6(a)*~~. **40 CFR 403.6(a)**.

(c) Compliance with new categorical standards shall be in accordance with the following:

(1) Except where an existing source meets the definition of a new source as defined under 327 IAC 5-17-13, an existing source with categorical pretreatment standards, including an existing source that:

(A) becomes an industrial user subsequent to promulgation of an applicable categorical pretreatment standard; and

(B) is thereafter considered an existing industrial user;

shall achieve compliance within three (3) years of the date the new standard is promulgated by EPA, unless a shorter compliance time is specified in the standard.

(2) A new source shall:

(A) install;

(B) have in operating condition; and

(C) start up;

all pollution control equipment required to comply with all pretreatment standards and requirements in this rule before beginning to discharge. Within the shortest feasible time, not to exceed ninety (90) days, a new source must meet all pretreatment standards and requirements in this rule.

(d) Concentration and mass limits are determined by the following:

(1) If the pollutant discharge limit for a categorical pretreatment standard is expressed as a concentration limit, the concentration limit shall apply only to the effluent of the process regulated by the standard or as otherwise specified by the standard. Wherever possible:

(A) an equivalent mass limit will be provided as an alternative to the standard; and

(B) it may be applied by the commissioner or a POTW with an approved POTW pretreatment program.

(2) If a pollutant discharge limit in a categorical pretreatment standard is expressed only as mass of pollutant per unit of production, the control authority may convert the limit to an equivalent limitation expressed either as mass of pollutant discharged per day or effluent concentration for the purpose of calculating the effluent limitation applicable to an individual industrial user.

(3) A control authority calculating an equivalent mass-per-day limitation according to subdivision (2) shall not calculate the limitation by multiplying the limit in the standard by the industrial user's production capacity but rather upon a reasonable measure of the industrial user's actual long-term daily production, such as the average daily production during a representative year. For a new source, actual production shall be estimated using projected production.

(4) A control authority calculating an equivalent concentration limitation according to

subdivision (2) shall calculate the limitation by dividing the mass limitation derived according to subdivision (3) by the average daily flow rate of the industrial user's regulated process wastewater. This average daily flow rate must be based upon a reasonable measure of the industrial user's actual long-term average flow rate, such as the average daily flow rate during a representative year.

(e) When the limits in a categorical pretreatment standard are expressed only in terms of pollutant concentrations, an industrial user may request that the control authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the control authority. The control authority may establish equivalent mass limits only if the industrial user meets all of the following conditions:

(1) To be eligible for equivalent mass limits, the industrial user shall:

(A) employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;

(B) currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard and not have used dilution as a substitute for treatment;

(C) provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate, in which both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;

(D) not have daily flow rates, production levels, or pollutant levels that vary so significantly that equivalent mass limits are not appropriate to control the discharge; and

(E) have consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

(2) An industrial user subject to equivalent mass limits shall do the following:

(A) Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits.

(B) Continue to do the following:

(i) Record the facility's:

(AA) flow rates through the use of a continuous effluent flow monitoring device; and

(BB) production rates and notify the control authority whenever production rates are expected to vary by more than twenty percent (20%) from its baseline production rates determined in subdivision (1)(C); upon notification the control authority must reassess the equivalent mass limit and revise the limit as necessary to reflect changed conditions at the facility.

(ii) Employ the same or comparable water conservation methods and technologies as those implemented under subdivision(1)(A) so long as it discharges under an equivalent mass limit.

(f) A control authority that chooses to establish equivalent mass limits under subsection (e):

(1) shall calculate the equivalent mass limit by multiplying the actual average daily flow

rate of the regulated process or processes of the industrial user by the concentration-based daily maximum and monthly average standard for the applicable categorical pretreatment standard and the appropriate unit conversion factor;

(2) upon notification of a revised production rate, shall reassess the equivalent mass limit and recalculate the limit as necessary to reflect changed conditions at the facility;

(3) may retain the same equivalent mass limit in subsequent control mechanism terms if the industrial user:

(A) meets the actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies;

(B) meets the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment under this section; and

(C) is in compliance with 40 CFR 403.17, regarding the prohibition of bypass; and

(4) may not express limits in terms of mass for pollutants such as pH, temperature, radiation, or other pollutants that cannot appropriately be expressed as mass.

(g) The control authority may convert the mass limits of the categorical pretreatment standards at 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users under the following conditions:

(1) When converting mass to concentration limits, the control authority must use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455.

(2) There must be documentation that dilution is not being substituted for treatment as prohibited by subsection (i).

(h) The application of a limitation for a categorical pretreatment standard shall be in accordance with the following:

(1) An equivalent limitation calculated in accordance with subsections (d)(3), (d)(4), and (e) is deemed pretreatment standards for the purposes of Section 307(d) of the Clean Water Act (33 U.S.C. 1317(d)) and the pretreatment rules. The control authority shall:

(A) document how the equivalent limits were derived; and

(B) make this information publicly available.

Once incorporated into its control mechanism, the industrial user shall comply with an equivalent limitation in lieu of a promulgated categorical standard from which the equivalent limitation was derived.

(2) Many categorical pretreatment standards specify:

(A) one (1) limit for calculating a maximum daily discharge limitation; and

(B) a second limit for calculating a maximum monthly average or four (4) day average limitation.

If such a standard is being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(3) Any industrial user operating under a control mechanism incorporating an equivalent mass or concentration limit calculated from a production based standard shall notify the control authority within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any user not notifying the control authority of such anticipated change will be required to meet the mass or concentration limit in its control mechanism that was based on the original estimate of the long-term average production rate.

(i) Except where expressly authorized to do so by an applicable categorical pretreatment standard, no industrial user shall increase the use of process water or, in any other way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with any pretreatment standard or requirement. An unauthorized attempt by an industrial user to dilute a regulated discharge shall be cause for the control authority to impose the mass limits set forth in the categorical standard.

**Notwithstanding 327 IAC 5-16-1(d), the July 1, 2007, version of 40 CFR 403.6(a) is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (Water Pollution Control Division; 327 IAC 5-18-4; filed Oct 10, 2000, 3:02 p.m.: 24 IR 298; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936; filed Apr 3, 2009, 1:55 p.m.: 20090429-IR-327060156FRA)*

SECTION 32. 327 IAC 5-18-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 5-18-5 Variance from a categorical pretreatment standard for fundamentally different factors

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-2; IC 13-18-3

Affected: IC 13-11-2; IC 13-13-5-1; IC 13-18-3-15; IC 13-18-4

Sec. 5. (a) The requirements for requesting a variance from a categorical pretreatment standard for fundamentally different factors are as follows:

(1) Any interested person may request a fundamentally different factors variance under this section for the following reasons:

(A) Factors relating to an industrial user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that industrial user.

(B) The existence of the differing factors justifies a different discharge limit from that specified in the applicable categorical pretreatment standard.

(2) Requests for a variance and supporting evidence must be submitted in writing to the commissioner within one hundred eighty (180) days after the date when a categorical pretreatment standard is published in the Federal Register. If an industrial user has requested a categorical determination under section 4(b) of this rule, the industrial user may defer submission of a variance request under this section until no later than thirty (30) days after a final decision has been made on the categorical determination under 40 CFR 403.6(a)(4).

(3) A written request for a fundamentally different factors variance (FDFV) must include the following:

(A) The name and address of the person making the request.

(B) Identification of the interest of the requester, which is affected by the categorical pretreatment standard, for which the variance is requested.

(C) Identification of the POTW currently receiving the waste from the industrial user for which alternative discharge limits are requested.

(D) Identification of the categorical pretreatment standards that are applicable to the industrial user.

(E) A list of each pollutant or pollutant parameter for which an alternative

discharge limit is sought.

(F) The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified in clause (E).

(G) A description of the industrial user's existing water pollution control facilities.

(H) A schematic flow representation of the industrial user's water system, including water supply, process wastewater systems, and points of discharge.

(I) A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request.

(b) The commissioner shall act upon a FDFV request according to the following:

(1) A decision on a FDFV request according to subsection (a) shall be made in accordance with the criteria and standards set forth in ~~40 CFR 403.13*~~. **40 CFR 403.13.** A variance shall not be granted if a proposed alternative discharge limit would result in a violation of prohibitive discharge standards in section 2 of this rule.

(2) When the commissioner makes a tentative decision on a FDFV request the commissioner shall provide a public notice of receipt of the request, opportunity to review the submission, and opportunity to comment. The public notice shall meet the following:

(A) Be circulated in a manner designed to inform interested and potentially interested persons of the request. Public notice shall include mailing notices to the following:

(i) The POTW that will receive the discharge from the industrial user requesting the variance.

(ii) Adjoining states whose waters may be affected.

(iii) Planning agencies, federal and state fish agencies, and shellfish and wildlife resource agencies designated in Section 208 of the Clean Water Act (33 U.S.C. 1288).

(iv) Any other person or group that has requested individual notice.

(B) Provide for a comment period of not less than thirty (30) days duration following the date of the public notice during which time interested persons may review the request and submit written comments on the request.

(3) The commissioner shall make a determination on the request for a FDFV taking into consideration any comments received during the comment period. If the commissioner denies the request, the commissioner's decision shall be final and notice thereof shall be provided to the following:

(A) The requester.

(B) The industrial user for which the variance was requested, if different from the requester of clause (A).

(C) The POTW intended to receive the industrial user's discharge that was the subject of the FDFV request.

(D) All persons who submitted comments on the request.

(4) If the commissioner concludes that fundamentally different factors do exist, the commissioner shall forward the request and a recommendation that a variance be approved to the EPA water management division director for a final determination pursuant to 40 CFR 403.13.

(5) The commissioner will act only on variances that contain all of the information required. The commissioner shall notify a person who has made an incomplete submission that the request is deficient and, unless the time period is extended, the person

will be given a maximum of thirty (30) days to correct the deficiency. If the deficiency is not corrected within the time period allowed by the commissioner, the request for variance shall be denied.

*40 CFR 403.13 is incorporated by reference. Copies of this publication may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402 or from the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 5-18-5; filed Oct 10, 2000, 3:02 p.m.: 24 IR 300; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1936*)

SECTION 33. 327 IAC 15-1-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 1. The purpose of this article is to establish NPDES **administrative** general permit rules **authority** for certain classes or categories of point source discharges, by prescribing the policies, procedures, and technical criteria to operate and discharge under the requirements of a NPDES general permit rule. Compliance with all requirements of applicable general permit rules may obviate the need for an individual NPDES permit issued under 327 IAC 5. A facility can operate under an individual NPDES permit and one (1) or more applicable general permit rules. **except those covered by individual permits, within a geographical area within the state.** (*Water Pollution Control Division; 327 IAC 15-1-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA*)

SECTION 34. 327 IAC 15-1-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-2 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 2. In addition to the definitions contained in ~~IC 13-7-1, IC 13-1-3-1.5, 327 IAC 1, IC 13-11-2~~ and 327 IAC 5, as amended, **327 IAC 5-1.5**, the following definitions apply throughout this article:

- (1) "Existing discharge" means any point source discharge of process or storm water which occurs either continuously or intermittently from a property at the time coverage under an individual NPDES permit is being sought.
- (2) "General permit rule boundary" means an area based upon existing geographic or political boundaries indicating the area within which a facility affected by this article is located.
- (3) "Individual NPDES permit" means a ~~an~~ NPDES permit issued to one (1) facility which contains requirements specific to that facility.
- (4) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual NPDES permit and includes information as required under 327 IAC 15-3 and the applicable general permit rule.

(5) "Storm water" means water resulting from rain, melting or melted snow, hail, or sleet. *(Water Pollution Control Division; 327 IAC 15-1-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 15; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 35. 327 IAC 15-1-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-3 Department request for data

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 3. (a) ~~The commissioner may, in a general permit issued under this article, require any person as defined at IC 13-7-1-17 who is subject to this article shall: to:~~

- (1) establish and maintain such records;
 - (2) make such reports;
 - (3) install, use, and maintain such monitoring equipment or methods (including, where appropriate, biomonitoring methods);
 - (4) sample such effluents, internal wastestreams where appropriate, or other material; and
 - (5) provide such other data, including, but not limited to, raw materials, catalysts, intermediate products, byproducts, production rates, and related process information;
- at such locations, at such times, and in such a manner, as the commissioner may reasonably prescribe.

(b) Sampling of internal wastestreams under subsection (a)(4) and the provisions of data under subsection (a)(5) shall not be required by the commissioner unless:

- (1) such data are reasonably expected to facilitate the identification or quantification of pollutants which may be released to the environment from facilities operated by the person to whom the request is made, and the identification or quantification of such pollutants could not reasonably be made by the commissioner in the absence of the requested information; or
 - (2) such data are necessary to properly control wastewater treatment processes.
- (Water Pollution Control Division; 327 IAC 15-1-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 36. 327 IAC 15-1-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-1-4 Enforcement

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4; IC 13-30

Sec. 4. This article shall be enforced through the provisions of IC 13-7-10-5, IC 13-7-11, or IC 13-7-12, or any combination thereof, as appropriate. Penalties for violation of this article shall be governed by IC 13-7-13. **as provided in IC 13-30.** *(Water Pollution Control Division; 327 IAC 15-1-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA)*

SECTION 37. 327 IAC 15-2-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-1 Purpose and scope

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2-79; IC 13-18-3-15; IC 13-18-4

Sec. 1. This rule defines the basic programmatic requirements of the NPDES general permit rule program to be administered by the commissioner consistent with NPDES requirements under the Federal Clean Water Act, as defined at IC 13-1-4-1, IC 13-7-1-10, and 327 IAC 5. **IC 13-11-2-79.** (*Water Pollution Control Division; 327 IAC 15-2-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16*)

SECTION 38. 327 IAC 15-2-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-2 NPDES general permit requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4; IC 13-18-12-9

Sec. 2. (a) The commissioner may regulate the following discharges under an NPDES general permit: rules:

(1) Point source discharges of Storm water **discharges** associated with industrial activity, as defined in 40 CFR 122.26(b)(14) as published in the Federal Register on November 16, 1990, **consistent with the EPA 2008 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as modified, effective May 27, 2009.**

(2) Storm water discharges associated with construction activity consistent with the EPA 2012 NPDES General Permit for Discharges from Construction Activities effective February 16, 2012.

(3) Small municipal separate storm sewer system discharges consistent with EPA's general permit requirements for small municipal separate storm sewer systems (MS4s) in 40 CFR 122, Subpart B.

(4) Discharges of pesticides to waters of the state consistent with EPA's NPDES Pesticide General Permit (PGP) for Point Source Discharges to Waters of the United States from the Application of Pesticides, effective October 31, 2011.

(5) Discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district for which an operating permit has been issued pursuant to IC 13-18-12-9.

(2) (6) Such other categories or subcategories of point sources **discharges or sludge use or disposal practices or facilities, sites, and entities** operating within the state that:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations, or operating conditions; and

(D) require the same or similar monitoring requirements;

consistent with the federal NPDES permit program administered by the EPA.

(b) The commissioner may determine that an individual permit must be obtained under section 9 of this rule. Any person to whom this article applies may avoid compliance with this article by obtaining an individual NPDES permit.

(c) Each general permit rule shall be applicable to persons meeting the criteria of subsection (a) existing within specific boundaries designated by the commissioner in accordance with the following:

(1) A general permit rule boundary shall correspond with existing geographic or political boundaries such as:

- (A) designated planning areas under the Federal Act;
- (B) regional sewer districts or sewer authorities;
- (C) city, county, or state political boundaries;
- (D) state highway systems;
- (E) standard metropolitan statistical areas;
- (F) urbanized areas as defined by the Bureau of Census according to the criteria in 39 FR 15202 (May 1, 1974); or
- (G) any other appropriate divisions or combinations of the boundaries in this subdivision which will encompass the sources subject to the general permit rule.

(2) Any designation of any general permit rule boundary is subject to reclassification by the commissioner:

- (A) upon revision of a general permit rule;
- (B) if individual NPDES permits have been issued to all persons in a category of point sources; or
- (C) as necessary to address water quality problems effectively. **issued by the commissioner must meet the criteria for general permits in 40 CFR 122.28.**

(d) As provided in 40 CFR 122.28(b)(2)(v), the commissioner may authorize a person to discharge under a general permit without submitting a notice of intent if the commissioner finds that a notice of intent would be inappropriate. However, this provision does not apply to discharges from:

- (1) publicly owned treatment works;**
- (2) combined sewer overflows;**
- (3) municipal separate storm sewer systems;**
- (4) primary industrial facilities; and**
- (5) storm water discharges associated with industrial activity.**

(Water Pollution Control Division; 327 IAC 15-2-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 16; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65)

SECTION 39. 327 IAC 15-2-2.3 IS ADDED TO READ AS FOLLOWS:

327 IAC 15-2-2.3 Public notice and comment

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 2.3. The commissioner shall make draft general permits available for public comment for not less than thirty (30) days, consistent with Section 402 of the Clean Water Act (33 U.S.C. 1342). *(Water Pollution Control Division; 327 IAC 15-2-2.3)*

SECTION 40. 327 IAC 15-2-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-3 NPDES general permit applicability requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 3. (a) A general permit rule may regulate all designated categories of point sources discharges for which a general permit rule exists except:

(1) as provided under section 6 or 9 of this rule or the applicable general permit ~~rule~~; and
 (2) ~~point source~~ discharges meeting the applicability requirements of a general permit ~~rule~~, who are already subject to individual NPDES permits prior to the effective date of a general permit ~~rule~~.

(b) Persons excluded from general permit ~~rule~~ regulation solely because they have an existing individual NPDES permit may request to be regulated under a general permit ~~rule~~ and may request that the individual NPDES permit be revoked or modified to remove the ~~point source~~ **discharge** from the existing permit. Upon revocation or expiration of the individual NPDES permit, the general permit ~~rule~~ shall apply to such ~~point source~~ discharges regulated under this article. This allowance to change from an individual NPDES permit to a general NPDES permit does not apply to municipal separate storm sewer system permittees who were issued an individual NPDES permit before January 1, 2000.

(c) A person that holds an individual NPDES permit may have discharges regulated under an applicable general permit ~~rule~~ if such discharges are not addressed in the individual permit. (*Water Pollution Control Division; 327 IAC 15-2-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830*)

SECTION 41. 327 IAC 15-2-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-5 Notice of intent letter

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 5. (a) **Except as provided in 40 CFR 122.28(b)(2)(v)**, any person subject to the requirements of this article **seeking to obtain an NPDES general permit** shall submit a **an** NOI letter that complies with this section, 327 IAC 15-3, and **in accordance with** the additional requirements ~~in any of the~~ applicable general permit ~~rule~~.

(b) A **An** NOI letter shall be submitted to the commissioner by the time specified ~~under 327 IAC 15-3 or the time indicated in the applicable general permit rule~~.

(c) The person responsible for the operation of the facility from which a point source discharge of pollutants and/or storm water occurs ~~must submit a NOI letter~~. (*Water Pollution Control Division; 327 IAC 15-2-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17*)

SECTION 42. 327 IAC 15-2-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-6 Exclusions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 6. (a) Except as provided in subsection (b), an individual NPDES permit issued under 327 IAC 5 is required for a discharge:

(1) to a receiving stream identified as an:

(A) outstanding state resource water; or

(B) outstanding national resource water;

as defined under IC 13-11-2-149.6 or IC 13-11-2-149.5, respectively; or

(2) that would significantly lower the water quality as defined under 327 IAC 2-1.3-2(50) of such a water downstream of the point source discharge.

(b) A discharge to an outstanding national resource water or outstanding state resource water **that consists only of storm water** may be permitted under ~~327 IAC 15-5; 327 IAC 15-6; or 327 IAC 15-13~~ **this article** if the commissioner determines the discharge will not significantly lower the water quality as defined under 327 IAC 2-1.3-2(50) of such a water downstream of that point source discharge. (*Water Pollution Control Division; 327 IAC 15-2-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 830; filed May 29, 2012, 3:19 p.m.: 20120627-IR-327080764FRA*)

SECTION 43. 327 IAC 15-2-7 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-7 Effect of general permit rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 4-22-2; IC 13-11-2; IC 13-18-4

Sec. 7. (a) Compliance with a general permit rule constitutes compliance with all applicable standards and limitations of the Federal Act CWA and state law.

(b) Compliance with an applicable general permit rule does not:

- (1) convey any property rights of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to obtain state or local assent required by law for the discharge or for construction or operation of the facility from which the discharge is made.

(*Water Pollution Control Division; 327 IAC 15-2-7; filed Aug 31, 1992, 5:00 p.m.: 16 IR 17*)

SECTION 44. 327 IAC 15-2-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-9 Special requirements for NPDES general permits

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 4-21.5; IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 9. (a) If a general permit rule is amended, all persons regulated by the affected general permit rule must be notified by first class mail of the amendment by the commissioner. Those persons notified by the commissioner under this subsection shall:

- (1) apply for an individual NPDES permit under 327 IAC 5-3; or
- (2) submit a complete NOI letter containing the information required in 327 IAC 15-3-2 and the amended rule;

within ninety (90) days after receipt of the notice from the commissioner.

(b) (a) The commissioner may require any person either with an existing discharge subject to the requirements of this article or who is proposing a discharge that would otherwise be subject to the requirements of this article to apply for and obtain an individual NPDES permit if one (1) of the six (6) cases listed in this subsection occurs. Interested persons may petition the commissioner to take action under this subsection. Cases where individual NPDES permits may be required include **any of** the following occurs:

- (1) The applicable requirements contained in this article are not adequate to ensure

compliance with:

- (A) water quality standards under 327 IAC 2-1 or 327 IAC 2-1.5; or
- (B) the provisions that implement water quality standards contained in 327 IAC 5.
- (2) The person is not in compliance with the terms and conditions of ~~the~~ **an NPDES general permit rule**.
- (3) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the ~~point source~~ **discharge**.
- (4) Effluent limitations guidelines that are more stringent than the requirements in the general permit ~~rule~~ are subsequently promulgated for ~~point sources~~ **discharges** regulated by the general permit ~~rule~~.
- (5) A water quality management plan containing more stringent requirements applicable to such ~~point source~~ **discharges** is approved.
- (6) Circumstances have changed since the activity regulated under this article began so that the discharger is no longer appropriately controlled under the general permit ~~rule~~ or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.
- (7) **The water is identified as impaired for a pollutant proposed to be discharged and listed pursuant to Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) and listed at <http://www.in.gov/idem/nps/2647.htm>.**
- (8) **The commissioner has revoked the person's coverage under the general permit.**

Interested persons may petition the commissioner to take action under this subsection.

~~(e)~~ **(b)** If, under subsection ~~(b)~~, **(a)**, the commissioner requires an individual NPDES permit, pursuant to 327 IAC 5-3, the commissioner shall notify the person in writing that an individual NPDES permit application is required. This notice shall be issued pursuant to IC 4-21.5 and shall also include the following:

- (1) A brief statement of the reasons for this decision.
- (2) An application form.
- (3) A statement setting a time for the person to file the application.
- (4) A statement that on the effective date of the individual NPDES permit, the general permit ~~rule~~, as it applies to the individual person, shall no longer apply.

The commissioner may grant additional time upon request of the applicant for completion of the application.

~~(d)~~ **(c)** A person having financial responsibility or operational control for a facility, project site, or municipal separate storm sewer system area and the associated storm water discharges, that meets the applicability requirements of the general permit ~~rule~~ and is not covered by an existing individual NPDES permit, must submit an application under 40 CFR 122.26 as ~~published in the Federal Register on November 16, 1990,~~ and 327 IAC 5-3 if the operator seeks to cover the discharge under an individual permit.

~~(e)~~ On the effective date of an individual NPDES permit that is issued to a person regulated under this article, this article no longer applies to that person.

~~(f)~~ Persons with a discharge meeting all the applicability criteria of more than one ~~(1)~~ general permit rule shall comply with all applicable general permit rules: *(Water Pollution Control Division; 327 IAC 15-2-9; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; filed Jan 14, 1997, 12:00 p.m.: 20 IR 1476; filed Oct 27, 2003, 10:15 a.m.: 27 IR 831)*

SECTION 45. 327 IAC 15-2-10 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-2-10 Prohibitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-3-15; IC 13-18-4

Sec. 10. No general permit rule shall be promulgated and issued where the terms and conditions of the permit rule do not comply with the applicable guidelines and requirements of:

- (1) the Federal Clean Water Act; or
- (2) effective regulations promulgated under the Federal Clean Water Act;
- (3) 327 IAC 2;
- (4) 327 IAC 5; or
- (5) this article.

(Water Pollution Control Division; 327 IAC 15-2-10; filed Aug 31, 1992, 5:00 p.m.: 16 IR 18)

SECTION 46. 327 IAC 15-3-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 1. The purpose of this rule is to establish the requirements and procedures for submitting an NOI letter under a general permit rule **for a general permit under rules 5, 6, 7, 13, or 14 of this article.** ~~Unless otherwise specified under an applicable general permit rule,~~ The NOI letter shall be sent to the following address:

Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue, Room N1255
Indianapolis, Indiana 46204
Attention: Permits Section, General Permit Desk

(Water Pollution Control Division; 327 IAC 15-3-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 47. 327 IAC 15-3-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-2 Content requirements of an NOI letter

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 2. ~~Except for permittees covered under 327 IAC 15-5 and 327 IAC 15-13 and as provided in 327 IAC 15-14-4,~~ **as provided in rules 5 and 13 of this article,** the NOI letter shall include the following:

- (1) Name, mailing address, and location of the facility for which the notification is submitted.
- (2) Standard Industrial Classification (SIC) codes, as defined in 327 IAC 5, up to four (4)

digits, that best represent the principal products or activities provided by the facility.

(3) The person's name, address, telephone number, e-mail address (if available), ownership status, and status as federal, state, private, public, or other entity.

(4) The latitude and longitude of the approximate center of the facility to the nearest fifteen (15) seconds, and, if the section, township, and range are provided, the nearest quarter section in which the facility is located.

(5) The name of receiving water, or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(6) A description of how the facility complies with the applicability requirements of the general permit rule.

(7) Any additional NOI letter information required by the applicable general permit rule.

(8) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g) and 327 IAC 15-4-3(h).

(Water Pollution Control Division; 327 IAC 15-3-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 48. 327 IAC 15-3-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-3-3 Deadline for submittal of an NOI letter; additional requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 3. (a) Any person proposing a new discharge that will be subject to a general permit rule, ~~except for construction activity under 327 IAC 15-5 and municipal separate storm sewer system discharges under 327 IAC 15-13, under rules 6, 7, or 14 of this article~~ shall submit an NOI letter and additional information as required by the applicable general permit rule at least one hundred eighty (180) days before the date on which the discharge is to commence unless permission for a later date has been granted by the commissioner or is established in the applicable general permit rule.

(b) For construction activity under 327 IAC 15-5-5, a construction activity NOI letter shall be submitted in accordance with 327 IAC 15-5-6.

(c) For municipal separate storm sewer system discharges under 327 IAC 15-13, a municipal separate storm sewer system NOI letter shall be submitted in accordance with 327 IAC 15-13-6 and 327 IAC 15-13-9.

~~(b) Any person requesting coverage under a general permit rule with an existing discharge shall submit an NOI letter within ninety (90) days of the effective date of the applicable general permit rule unless permission for a later date has been granted by the commissioner or is established in 327 IAC 15-2-9(a) or the applicable general permit rule.~~

(Water Pollution Control Division; 327 IAC 15-3-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 832; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-

327130176BFA)

SECTION 49. 327 IAC 15-4-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-4-1 General conditions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4; IC 13-18-11

Sec. 1. (a) The conditions in this section apply to all NPDES general permit rules: **permits issued under rules 5, 6, 7, 13, and 14 of this article.**

(b) Any violation of this article constitutes a violation of the ~~Federal Act CWA and the Indiana Environmental Management Act~~ **environmental management laws** and is grounds for **subject to enforcement action and/or requirement under IC 13-30. A person who violates this article may be required** to obtain an individual NPDES permit.

(c) ~~Under the Indiana Environmental Management Act at IC 13-7-13-3 [IC 13-7 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.],~~ **In accordance with IC 13-30-4-1,** any person who violates ~~"any a rule or standard adopted by one (1) of the boards"~~ **the board** is subject to a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of such violation. Any person who ~~willfully or negligently violates "any rule or standard adopted by one (1) of the boards"~~ is subject to a fine of not less than two thousand five hundred dollars (\$2,500) nor more than twenty-five thousand dollars (\$25,000) per day of violation, or by imprisonment for not more than one (1) year, or both. **Knowing, willful, or reckless violations of NPDES permit conditions are subject to criminal penalties under IC 13-30-10.** If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or by imprisonment for not more than two (2) years, or both. Except as provided in applicable general permit rule conditions on bypassing under section 2(c) of this rule, and upsets under section 2(d) of this rule, nothing in this article shall be construed to relieve persons in violation of it from civil or criminal penalties for noncompliance.

(d) Persons in violation of this article shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from their noncompliance.

(e) Persons regulated by this article shall furnish to the commissioner, within a reasonable time, any information which the commissioner may request to determine whether cause exists for revoking and reapproving or terminating the approval to discharge under this article or to determine compliance with this article. Those persons shall also furnish to the commissioner, upon request, copies of records required to be kept by this article.

(f) Notwithstanding the provisions of 327 IAC 15-2-9, if a toxic effluent standard, prohibition, or sediment, wet weather, or biological criteria (including any schedule of compliance specified in such effluent standard or prohibition) is established under the ~~Federal Act CWA~~ for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such pollutant in an applicable general permit rule, the rule shall be modified to conform to the toxic effluent standard or prohibition. The person shall comply with effluent standards or prohibitions established under the ~~Federal Act CWA~~ for toxic pollutants injurious to human health within the time provided in the regulations that establish

those standards or prohibitions, even if the rule has not yet been modified to incorporate the requirement.

(g) When cyanide or cyanogen compounds are used in any of the processes at a facility regulated under this article, the person responsible for that facility shall provide approved facilities for the containment of any losses of these compounds in accordance with the requirements under 327 IAC 2-2-1.

(h) Persons regulated by this article shall have all wastewater treatment facilities, if any, under the direct supervision of an operator certified by the commissioner as required under ~~IC 13-1-6 [IC 13-1 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.] IC 13-18-11~~ and 327 IAC 8-12.

(i) Nothing in this article shall be construed to relieve anyone from any responsibility, liability, or penalty to which they are or may be subject to under the ~~Federal Act, CWA~~.

(j) The applicability of this article does not convey any property rights of any sort or any exclusive privileges.

(k) The provisions of this article are severable and, if any provision of this article or the application of any provision of this article to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this article shall not be affected thereby.

(l) Persons regulated by this article shall allow the commissioner, or an authorized representative, (including an authorized contractor or representative of another governmental agency acting as a representative on behalf of the commissioner), at reasonable times, and in a manner to minimize disruption of the business, upon the presentation of credentials and such other documents as may be required by law, to:

- (1) enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this article;
- (2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this article;
- (3) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this article; and
- (4) sample or monitor, at reasonable times, for the purposes of assuring compliance with the applicable general permit rule conditions or as otherwise authorized by the ~~Federal Act, CWA~~ any substances or parameters at any location.

(m) Persons regulated by this article shall not construct, install, or modify any water pollution control facility without a valid construction permit issued by the ~~Indiana department of environmental management department~~ under 327 IAC 3-2.

(n) A person with a new facility to which rules 5, 6, 7, 13, or 14 of this article applies must comply with all applicable requirements of this article including the submittal of the appropriate NOI. (*Water Pollution Control Division; 327 IAC 15-4-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 19; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; errata, 16 IR 898*)

SECTION 50. 327 IAC 15-4-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-4-3 Reporting requirements

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4; IC 13-30

Sec. 3. (a) Any change in the information submitted in the NOI letter ~~should~~ **shall** be reported as soon as practicable to the commissioner. Changes which are reasonably expected to alter the characteristics of the discharge regulated under a general permit rule must be reported prior to the change. Following such notice, the commissioner may request the person to submit an application for an individual NPDES permit.

(b) Monitoring results shall be reported at the intervals and in the form specified in the ~~appropriate~~ **applicable** general permit rule.

(c) The following are requirements for twenty-four (24) hour reporting:

(1) Persons regulated by **rules 5, 6, 7, 13, or 14 of** this article shall orally report information to the office of water quality at (317) 232-8670 on the following types of noncompliance within one (1) business day from the time the person becomes aware of such noncompliance:

(A) Any unanticipated bypass which exceeds any effluent limitation in the applicable general permit rule.

(B) Violation of a maximum daily discharge limitation for any of the pollutants listed by the commissioner in the rule to be reported within one (1) business day.

(C) Any noncompliance which may pose a significant danger to human health or the environment.

(2) A written submission shall also be provided to the office of ~~enforcement~~ **water quality** within five (5) business days of the time the person becomes aware of the circumstances. The written submission shall contain the following:

(A) A description of the noncompliance and its cause.

(B) The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated ~~time it is expected to continue.~~ **duration.**

(C) Steps taken or planned to reduce and eliminate the noncompliance and prevent its recurrence.

The commissioner may waive the written report on a case-by-case basis if the oral report has been received within one (1) business day.

(d) Persons regulated under **rules 5, 6, 7, 13, or 14 of** this article shall report any instance of noncompliance not reported under subsection (c) at the time the pertinent discharge monitoring report is submitted. The report shall contain the information specified under subsection (c)(2).

(e) ~~Where the~~ **When a** person becomes aware that ~~he failed to submit~~ any relevant facts ~~were omitted,~~ or submitted incorrect information ~~was submitted~~ in a ~~an~~ NOI letter, or in any report to the commissioner, **required to be submitted under this article,** the person shall promptly submit such facts or corrected information.

(f) Persons regulated under **rules 5, 6, 7, 13, or 14** of this article shall notify the commissioner as soon as they know, or have reason to believe, the following:

(1) That any activity has occurred, or will occur, ~~which~~ **that** would result in the discharge of any pollutant identified as toxic, under the ~~Federal Act~~ **CWA**, which is not limited in the applicable general permit rule, if that discharge will exceed the highest of the following notification levels:

(A) One hundred (100) micrograms per liter.

(B) Two hundred (200) micrograms per liter for acrolein and acrylonitrile; five hundred (500) micrograms per liter for 2,4-dinitrophenol and 2-methyl-4,6-dinitrophenol; and one (1) milligram per liter for antimony.

(C) A level established elsewhere in ~~the~~ **an applicable** rule by the commissioner.

(2) That it ~~has begun, or expects to begin, to use or manufacture as an intermediate or final product or byproduct~~ any toxic pollutant ~~which was not reported in the NOI letter.~~ **is or will be used or manufactured as an intermediate or final product or byproduct.**

(g) Signatory requirements ~~shall be as follows:~~ **for**

~~(1) All reports required by this article and other information requested by the commissioner shall be signed by a person described as follows, or by a duly authorized representative of that person~~ **according to the following:**

~~(A) (1)~~ For a corporation, by a responsible corporate officer. As used in this section, "responsible corporate officer" means:

(i) ~~(A)~~ a president, secretary, treasurer, any vice president of the corporation in charge of a principal business function, or any other person who performs similar policy **making** or decision making functions for the corporation; or

(ii) ~~(B)~~ the manager of one (1) or more manufacturing, production, or operating facilities ~~employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 dollars), if~~ **provided the manager:**

(i) is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty to:

(AA) make major capital investment recommendations; and

(BB) initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; and

(ii) can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and

where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

~~(B) (2)~~ For a partnership or sole proprietorship, by a general partner or the proprietor, respectively.

~~(C) (3)~~ For a municipality, state, federal, or other public agency or political subdivision thereof, by either a principal executive officer or ranking elected official. **For of this section, a principal executive officer of a federal agency includes:**

(A) the chief executive officer of the agency; or

(B) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (for example, Regional Administrators of EPA).

(4) Permit applicants who meet the criteria set forth in this subsection may also utilize agency-approved electronic application mechanisms in lieu of paper NPDES applications.

(2) (h) A person is a duly authorized representative only if:

(A) the authorization is made in writing by a person described under ~~subdivision (1);~~ **subsection (g);**

(B) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(C) the written authorization is submitted to the commissioner.

If an authorization under this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of this subsection must be submitted to the commissioner prior to or together with any reports, information, or applications to be signed by an authorized representative.

(3) (i) Any person signing a document under this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(h) (j) Except for data determined to be confidential under ~~327 IAC 12-1-327 IAC 12-1-3~~ *repealed filed Mar 9, 2000, 7:47 a.m.: 23-IR-1637. See 327 IAC 12-1-3*, **confidentiality rules at 327 IAC 12.1**, all reports prepared in accordance with the terms of the applicable general permit rule shall be available for public inspection at the offices of the Indiana department of environmental management and the U.S. Environmental Protection Agency Regional Administrator. As required by the Federal Act, CWA, information contained in the NOI letter and effluent data shall not be considered confidential.

(i) (k) The Indiana Environmental Management Act at ~~IC 13-7-13-3(b) /IC 13-7-13-3(b) was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.~~ provides that **following are subject to the criminal penalties and provisions of IC 13-30, including criminal fines and imprisonment under IC 13-30-10:**

(1) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the applicable general permit rule, including monitoring reports or reports of compliance or noncompliance, ~~shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than six (6) months per violation, or by both. The Federal Act, as well as IC 13-7-13-3 /IC 13-7-13-3 was repealed by P.L.1-1996, SECTION 99, effective July 1, 1996.~~ and IC 35-50-3-3,

provides that

(2) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article. ~~shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) per violation, or by imprisonment for not more than one hundred eighty (180) days per violation, or by both.~~

(Water Pollution Control Division; 327 IAC 15-4-3; filed Aug 31, 1992, 5:00 p.m.: 16 IR 21; errata filed Apr 10, 2006, 2:46 p.m.: 29 IR 2547)

SECTION 51. 327 IAC 15-5-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4

Sec. 1. The purpose of this rule is to establish requirements for storm water discharges from construction activities of one (1) acre or more ~~so that to protect~~ the public health, existing water uses, and aquatic biota. ~~are protected.~~ *(Water Pollution Control Division; 327 IAC 15-5-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; errata, 16 IR 898; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 833; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 52. 327 IAC 15-5-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-2 Applicability of general permit rules

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 13-18-4; IC 14-34

Sec. 2. (a) The requirements under this rule apply to all persons who:

- (1) do not obtain an individual NPDES permit under 327 IAC 15-2-6;
- (2) meet the general permit rule applicability requirements under 327 IAC 15-2-3; and
- (3) are involved in construction activity, except operations that result in the land disturbance of less than one (1) acre of total land area as determined under subsection (h) and are not part of a larger common plan of development or sale.

(b) The requirements under this rule do not apply to persons who are involved in:

- (1) agricultural land disturbing activities; or
- (2) forest harvesting activities.

(c) The requirements under this rule do not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

- (1) Landfills that have been issued a certification of closure under 329 IAC 10.
- (2) Coal mining activities permitted under IC 14-34.
- (3) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the department under 329 IAC 10 that contains equivalent storm water requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

(d) The project site owner ~~has~~ **shall do** the following: ~~responsibilities:~~

(1) Complete a ~~sufficient notice of intent letter.~~ **and submit:**

(A) **an NOI; and**

(B) **a construction plan in accordance with section 6 of this rule.**

(2) ~~Ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule.~~

(3) ~~(2)~~ Ensure compliance with this rule during:

(A) the construction activity; and

(B) implementation of the construction plan.

(4) ~~(3)~~ Notify the department with a ~~sufficient~~ **Submit a** notice of termination letter **(NOT) in accordance with section 8 of this rule.**

(5) ~~(4)~~ Ensure that all persons engaging in construction activities on a permitted project site comply with the applicable requirements of this rule and the approved construction plan.

(e) For off-site construction activities that provide services (for example, road extensions, sewer, water, and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

(f) For an individual lot where land disturbance is expected to be one (1) acre or more and the lot lies within a project site permitted under this rule, the individual lot owner shall:

(1) complete his or her own notice of intent letter; and

(2) ensure that a sufficient construction plan is completed and submitted in accordance with section 6 of this rule.

(g) For an individual lot where the land disturbance is less than one (1) acre and the lot lies within a project site permitted under this rule, the individual lot operator shall ~~be in accordance with the following:~~

(1) ~~comply with:~~

(A) ~~(1)~~ the provisions and requirements of the plan developed by the project site owner; and

(B) ~~(2)~~ section 7.5 of this rule.

(2) ~~Does not need to submit A separate notice of intent letter and construction plans.~~ **plan are not required to be submitted.**

(h) ~~Multilot~~ **Multi-lot** project sites are **shall be** regulated by this rule ~~in accordance with the following:~~ **as follows:**

(1) A determination of the area of land disturbance shall be calculated by adding the total area of land disturbance for improvements, such as roads, utilities, or common areas, and the expected total disturbance on each individual lot, as determined by the following:

(A) For a single-family residential project site where the lots are one-half (0.5) acre or more, one-half (0.5) acre of land disturbance must be used as the expected lot disturbance.

(B) For a single-family residential project site where the lots are less than one-half (0.5) acre in size, the total lot must be calculated as being disturbed.

(C) ~~To calculate lot disturbance on~~ **For** all other types of project sites, such as industrial and commercial project sites, ~~the following apply:~~ **lot disturbance**

shall be calculated as follows:

- (i) Where lots are one (1) acre or greater in size, a minimum of one (1) acre of land disturbance ~~must be calculated as~~ **shall be** the expected lot disturbance.
- (ii) Where the lots are less than one (1) acre in size, the total lot must be calculated as being disturbed.
- (2) For purposes of this rule, strip developments:
 - (A) are considered as one (1) project site; and
 - (B) must comply with this rule;
 unless the total combined disturbance on all individual lots is less than one (1) acre and is not part of a larger common plan of development or sale.

(i) Submittal of a ~~notice of intent~~ **NOI** and construction plans is not required for construction activities associated with a single-family residential dwelling disturbing less than five (5) acres when the dwelling is not part of a larger common plan of development or sale. Provisions in section 7(b)(1) through 7(b)(5), 7(b)(10) through 7(b)(17), 7(b)(19), and 7(b)(20) of this rule shall be complied with throughout construction activities and until the areas are permanently stabilized.

(j) The ~~department~~ **commissioner** may waive the permit requirements under this rule for construction activities that disturb less than five (5) acres ~~where if the waiver applicant determined by the commissioner~~ certifies that:

- (1) a total maximum daily load (TMDL) for the pollutants of concern from storm water discharges associated with construction activity indicates that controls on construction site discharges are not needed to protect water quality; or
- (2) in receiving waters that do not require a TMDL study, an equivalent analysis demonstrates water quality is not threatened by storm water discharges, and it has been determined that allocations for the pollutants of concern from the construction site discharges are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety.

(Water Pollution Control Division; 327 IAC 15-5-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 833; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 53. 327 IAC 15-5-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-4 Definitions

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-11-2; IC 14-32; IC 14-34

Sec. 4. In addition to the definitions contained in IC 13-11-2, ~~327 IAC 4~~, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "Agricultural conservation practices" means practices that are constructed on agricultural land for the purposes of controlling soil erosion and sedimentation. These practices include grass waterways, sediment basins, terraces, and grade stabilization structures.
- (2) "Agricultural land disturbing activity" means tillage, planting, cultivation, or

harvesting operations for the production of agricultural or nursery vegetative crops. The term also includes pasture renovation and establishment, the construction of agricultural conservation practices, and the installation and maintenance of agricultural drainage tile. For purposes of this rule, the term does not include land disturbing activities for the construction of agricultural related facilities, such as:

- (A) barns;
- (B) buildings to house livestock;
- (C) roads associated with infrastructure;
- (D) agricultural waste lagoons and facilities;
- (E) lakes and ponds;
- (F) wetlands; and
- (G) other infrastructure.

~~(3) "Commissioner" refers to the commissioner of the department.~~

~~(4)~~ **(3)** "Construction activity" means land disturbing activities and land disturbing activities associated with the construction of infrastructure and structures. This term does not include routine ditch or road maintenance or minor landscaping projects.

~~(5)~~ **(4)** "Construction plan" means a representation of a project site and all activities associated with the project. The plan includes the location of the project site, buildings and other infrastructure, grading activities, schedules for implementation, and other pertinent information related to the project site. A storm water pollution prevention plan is a part of the construction plan.

~~(6)~~ **(5)** "Construction site access" means a stabilized stone surface at all points of ingress or egress to a project site for the purpose of capturing and detaining sediment carried by tires of vehicles or other equipment entering or exiting the project site.

~~(7)~~ **(6)** "Contractor" or "subcontractor" means an individual or company hired by the project site or individual lot owner, their agent, or the individual lot operator to perform services on the project site.

~~(8) "Department" refers to the department of environmental management.~~

~~(9)~~ **(7)** "Developer" means:

- (A) any person financially responsible for construction activity; or
- (B) an owner of property who sells or leases, or offers for sale or lease any lots in a subdivision.

~~(10) "DNR-DSC" means the division of soil conservation of the department of natural resources.~~

~~(11)~~ **(8)** "Erosion" means the detachment and movement of soil, sediment, or rock fragments by water, wind, ice, or gravity.

~~(12)~~ **(9)** "Erosion and sediment control measure" means a practice, or a combination of practices, to control erosion and resulting sedimentation.

~~(13)~~ **(10)** "Erosion and sediment control system" means the use of appropriate erosion and sediment control measures to minimize sedimentation by first reducing or eliminating erosion at the source and then, as necessary, trapping sediment to prevent it from being discharged from or within a project site.

~~(14)~~ **(11)** "Final stabilization" means the establishment of permanent vegetative cover or the application of a permanent ~~non-erosive~~ **non-erosive** material to areas where all land disturbing activities have been completed and no additional land disturbing activities are planned under the current permit.

~~(15)~~ **(12)** "Grading" means the cutting and filling of the land surface to a desired slope or elevation.

~~(16)~~ **(13)** "Impervious surface" means surfaces, such as pavement and rooftops, that

prevent the infiltration of storm water into the soil.

~~(17)~~ **(14)** "Individual building lot" means a single parcel of land within a ~~multi-parcel~~ **multi-parcel** development.

~~(18)~~ **(15)** "Individual lot operator" means a contractor or subcontractor working on an individual lot.

~~(19)~~ **(16)** "Individual lot owner" means a person who has financial control of construction activities for an individual lot.

~~(20)~~ **(17)** "Land disturbing activity" means any manmade change of the land surface, including removing vegetative cover that exposes the underlying soil, excavating, filling, transporting, and grading.

~~(21)~~ **(18)** "Larger common plan of development or sale" means a plan, undertaken by a single project site owner or a group of project site owners acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designated, purchased or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased or other construction activity by a single entity for its own use.

~~(22)~~ **(19)** "Measurable storm event" means a precipitation event that results in a total measured precipitation accumulation equal to, or greater than, one-half (0.5) inch of rainfall.

~~(23)~~ **(20)** "MS4 area" means a land area comprising one (1) or more places that receives coverage under one (1) NPDES storm water permit regulated by 327 IAC 15-13 or 327 IAC 5-4-6(a)(4) and 327 IAC 5-4-6(a)(5).

~~(24)~~ **(21)** "MS4 operator" means the person responsible for development, implementation, or enforcement of the minimum control measures for a designated MS4 area regulated under 327 IAC 15-13.

~~(25)~~ **(22)** "Municipal separate storm sewer system" or "MS4" has the same meaning set forth at 327 IAC 15-13-5(42).

~~(26)~~ **(23)** "Peak discharge" means the maximum rate of flow during a storm, usually in reference to a specific design storm event.

~~(27)~~ **(24)** "Permanent stabilization" means the establishment, at a uniform density of seventy percent (70%) across the disturbed area, of vegetative cover or permanent ~~nonerosive~~ **non-erosive** material that will ensure the resistance of the soil to erosion, sliding, or other movement.

~~(28)~~ **(25)** "Phasing of construction" means sequential development of smaller portions of a large project site, stabilizing each portion before beginning land disturbance on subsequent portions, to minimize exposure of disturbed land to erosion.

~~(29)~~ **(26)** "Project site" means the entire area on which construction activity is to be performed.

~~(30)~~ **(27)** "Project site owner" means the person required to submit the NOI letter under this article and required to comply with the terms of this rule. ~~including either of The following:~~ **term includes a:**

(A) A developer; and

(B) A person who has financial and operational control of construction activities and project plans and specifications, including the ability to make modifications to those plans and specifications.

~~(31)~~ **(28)** "Sediment" means solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice and has come to rest on the earth's surface.

~~(32)~~ **(29)** "Sedimentation" means the settling and accumulation of unconsolidated

sediment carried by storm water run-off.

(33) **(30)** "Soil" means the unconsolidated mineral and organic material on the surface of the earth that serves as the natural medium for the growth of plants.

(34) **(31)** "Soil and Water Conservation District" or "SWCD" means a political subdivision established under IC 14-32.

(35) **(32)** "Storm water pollution prevention plan" means a plan developed to minimize the impact of storm water pollutants resulting from construction activities.

(36) **(33)** "Storm water quality measure" means a practice, or a combination of practices, to control or minimize pollutants associated with storm water run-off.

(37) **(34)** "Strip development" means a ~~multi-lot~~ **multi-lot** project where building lots front on an existing road.

(38) **(35)** "Subdivision" means any land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale.

(39) **(36)** "Temporary stabilization" means the covering of soil to ensure its resistance to erosion, sliding, or other movement. The term includes vegetative cover, anchored mulch, or other ~~non-erosive~~ **non-erosive** material applied at a uniform density of seventy percent (70%) across the disturbed area.

(40) **(37)** "Tracking" means the deposition of soil that is transported from one (1) location to another by tires, tracks of vehicles, or other equipment.

(41) **(38)** "Trained individual" means an individual who is trained and experienced in the principles of storm water quality, including erosion and sediment control as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make judgments regarding storm water control or treatment and monitoring.

(Water Pollution Control Division; 327 IAC 15-5-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 23; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 834; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2284; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 54. 327 IAC 15-5-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-5 NOI requirements

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 5. (a) ~~The following information must be submitted by the project site owner with A complete NOI letter under this rule:~~ **must contain the following:**

- (1) Name, mailing address, and location of the project site for which the notification is submitted.
- (2) The project site owner's name, address, telephone number, e-mail address (if available), ownership status as federal, state, public, private, or other entity.
- (3) Contact person (if different than project site owner), person's name, company name, address, e-mail address (if available), and telephone number.
- (4) A brief description of the construction project, including a statement of the total acreage of the project site. Total acreage claimed in the NOI letter shall be consistent with the acreage covered in the construction plan.
- (5) Estimated dates for initiation and completion of construction activities. Within forty-

eight (48) hours of the initiation of construction activity, the project site owner must notify the commissioner and the appropriate plan reviewing agency of the actual project start date.

(6) The latitude and longitude of the approximate center of the project site to the nearest fifteen (15) seconds, and the nearest quarter section, township, range, and civil township in which the project site is located.

(7) Total impervious surface area, in square feet, of the final project site including structures, roads, parking lots, and other similar improvements.

(8) The number of acres to be involved in the construction activities.

(9) Proof of publication in a newspaper of general circulation in the affected area that notified the public that a construction activity is to commence, that states, "(Company name, address) is submitting an NOI letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-5 to discharge storm water from construction activities for the following project: (name of the construction project, address of the location of the construction project). Run-off from the project site will discharge to (stream(s) receiving the discharge(s)).".

(10) As applicable, a list of all MS4 areas designated under 327 IAC 15-13 within which the project site lies.

(11) A written certification by the operator that:

(A) the storm water quality measures included in the construction plan comply with the requirements under sections 6.5, 7, and 7.5 of this rule and that the storm water pollution prevention plan complies with all applicable federal, state, and local storm water requirements;

(B) the measures required by section 7 of this rule will be implemented in accordance with the storm water pollution prevention plan;

(C) if the projected land disturbance is one (1) acre or more, the applicable soil and water conservation district or other entity designated by the department has been sent a copy of the construction plan for review;

(D) storm water quality measures beyond those specified in the storm water pollution prevention plan will be implemented during the life of the permit if necessary to comply with section 7 of this rule; and

(E) implementation of storm water quality measures will be inspected by trained individuals.

(12) The name of receiving water or, if the discharge is to a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water.

(13) The NOI letter must be signed by a person meeting the signatory requirements in 327 IAC 15-4-3(g) **and 327 IAC 15-4-3(h)**.

(14) A notification from the SWCD, ~~DNR-DSC~~, or other entity designated by the department as the reviewing agency indicating that the constructions plans ~~are sufficient~~ to comply with this rule. This requirement may be waived if the project site owner has not received notification from the reviewing agency within the time frame specified in 327 IAC 15-5-6(b)(3).

(b) Send NOI letters to:

Indiana Department of Environmental Management
Office of Water Quality ~~Urban Wet Weather Section~~
100 North Senate Avenue, Room N1255
Indianapolis, Indiana 46204.

~~Attention: Rule 5 Storm Water Coordinator.~~
(Water Pollution Control Division; 327 IAC 15-5-5; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 836; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 55. 327 IAC 15-5-6 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-6 Submittal of an NOI and construction plans

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 6. (a) After the project site owner has received notification from the reviewing agency that the construction plans meet the requirements of the rule or the review period outlined in subsection (b)(3) has expired, all NOI letter information required under section 5 of this rule shall be submitted to the commissioner at least forty-eight (48) hours prior to the initiation of land disturbing activities at the site. A copy of the completed NOI letter must also be submitted to all SWCDs, or other entity designated by the department, where the land disturbing activities are to occur. If the NOI letter is determined to be deficient, the project site owner must address the deficient items and submit an amended NOI letter to the commissioner at the address specified in section 5 of this rule.

(b) For a project site where the proposed land disturbance is one (1) acre or more as determined under section 2 of this rule, the following requirements must be met:

(1) A construction plan must be submitted according to the following:

(A) Prior to the initiation of any land disturbing activities.

(B) Sent to the appropriate SWCD or other entity designated by the department for:

(i) review and verification that the plan meets the requirements of the rule;
or

(ii) a single coordinated review in accordance with subsection (d)(3) if:

(AA) the construction activity will occur in more than one (1) SWCD; and

(BB) the project site owner has made a request for a single coordinated review.

(2) If the construction plan required by subdivision (1) is determined to be deficient, the SWCD, ~~DNR-DSC~~, or other entity designated by the department as the reviewing agency may require modifications, terms, and conditions as necessary to meet the requirements of the rule. The initiation of construction activity following notification by the reviewing agency that the plan does not meet the requirements of the rule is a violation and subject to enforcement action. If notification of a deficient plan is received after the review period outlined in subdivision (3) and following commencement of construction activities, the plans must be modified to meet the requirements of the rule and resubmitted within fourteen (14) days of receipt of the notification of deficient plans.

(3) If the project site owner does not receive notification within twenty-eight (28) days after the plan is received by the reviewing agency stating that the reviewing agency finds the plan is deficient, the project site owner may submit the NOI letter information.

(c) The following apply for a project where construction activity occurs inside a single MS4 area regulated under 327 IAC 15-13:

- (1) A copy of the completed NOI letter must be submitted to the appropriate MS4 operators.
- (2) The project site owner must comply with all appropriate ordinances and regulations within the MS4 area related to storm water discharges. The MS4 operator ordinance as required by 327 IAC 15-13-15(b) and 327 IAC 15-13-16(b) will be considered to have the same authority as this rule within the regulated MS4 area.

(d) For a project that will occur in more than one (1) jurisdiction, such as an SWCD or regulated MS4 area, the following must be met:

- (1) Project site owners of project sites occurring in multiple MS4 areas, but not in nondesignated areas, shall submit the information required in subsection (c) to each appropriate MS4 operator.
- (2) Project site owners of project sites occurring in one (1) or more MS4 areas and nondesignated areas shall submit the information required in subsections (a) through (c) to all appropriate MS4 operators, and the SWCD or other entity designated by the department.
- (3) Project site owners of project sites occurring in multiple nondesignated areas, but not occurring within an MS4 area, may request a single coordinated review through the ~~DNR-DSC~~ **IDEM Office of Water Quality** at the following address:

402 West Washington Street
100 North Senate Avenue
 Room W265 N1255
 Indianapolis, Indiana 46204.

~~Upon acceptance of the request, the DNR-DSC will coordinate the plan review with appropriate SWCDs and other entities designated by the department. (Water Pollution Control Division; 327 IAC 15-5-6; filed Aug 31, 1992, 5:00 p.m.: 16 IR 24; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 837; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2284; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)~~

SECTION 56. 327 IAC 15-5-6.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-6.5 Requirements for construction plans

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 6.5. (a) For project sites that do not meet the criteria in subsection (b), the project site owner shall develop a set of construction plans. Storm water quality measures included in the plan must achieve the minimum project site requirements specified in section 7 of this rule. The construction plans must include the following:

- (1) Project narrative and supporting documents, including the following information:
 - (A) An index indicating the location, in the construction plans, of all information required by this subsection.
 - (B) Description of the nature and purpose of the project.
 - (C) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.
 - (D) Soil properties, characteristics, limitations, and hazards associated with the

project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.

(E) General construction sequence of how the project site will be built, including phases of construction.

(F) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).

(G) A reduced plat or project site map showing the lot numbers, lot boundaries, and road layout and names. The reduced map must be legible and submitted on a sheet or sheets no larger than eleven (11) inches by seventeen (17) inches for all phases or sections of the project site.

(H) Identification of any other state or federal water quality permits that are required for construction activities associated with the owner's project site.

(2) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map or county or municipal road map.

(3) An existing project site layout that must include the following information:

(A) Location and name of all wetlands, lakes, and water courses on or adjacent to the project site.

(B) Location of all existing structures on the project site.

(C) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.

(D) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.

(E) Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees, on the project site.

(F) Land use of all adjacent properties.

(G) Existing topography at a contour interval appropriate to indicate drainage patterns.

(4) Final project site layout, including the following information:

(A) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.

(B) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.

(C) Proposed final topography at a contour interval appropriate to indicate drainage patterns.

(5) A grading plan, including the following information:

(A) Delineation of all proposed land disturbing activities, including off-site activities that will provide services to the project site.

(B) Location of all soil stockpiles and borrow areas.

(C) Information regarding any off-site borrow, stockpile, or disposal areas that are associated with a project site and under the control of the project site owner.

(D) Existing and proposed topographic information.

(6) A drainage plan, including the following information:

(A) An estimate of the peak discharge, based on the ten (10) year storm event, of the project site for both preconstruction and postconstruction conditions.

(B) Location, size, and dimensions of all storm water drainage systems, such as culverts, storm sewers, and conveyance channels.

- (C) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exists.
 - (D) Locations of specific points where storm water discharge will leave the project site.
 - (E) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.
 - (F) Location, size, and dimensions of features, such as permanent retention or detention facilities, including existing or manmade wetlands, used for the purpose of storm water management.
- (7) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:
- (A) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.
 - (B) Temporary stabilization plans and sequence of implementation.
 - (C) Permanent stabilization plans and sequence of implementation.
 - (D) Temporary and permanent stabilization plans shall include the following:
 - (i) Specifications and application rates for soil amendments and seed mixtures.
 - (ii) The type and application rate for anchored mulch.
 - (E) Construction sequence describing the relationship between implementation of storm water quality measures and stages of construction activities.
 - (F) Self-monitoring program including plan and procedures.
 - (G) A description of potential pollutant sources associated with the construction activities, that may reasonably be expected to add a significant amount of pollutants to storm water discharges.
 - (H) Material handling and storage associated with construction activity shall meet the spill prevention and spill response requirements in 327 IAC 2-6.1.
- (8) The postconstruction storm water pollution prevention plan. The plan must include the following information:
- (A) A description of potential pollutant sources from the proposed land use, that may reasonably be expected to add a significant amount of pollutants to storm water discharges.
 - (B) Location, dimensions, detailed specifications, and construction details of all postconstruction storm water quality measures.
 - (C) A description of measures that will be installed to control pollutants in storm water discharges that will occur after construction activities have been completed. Such practices include infiltration of run-off, flow reduction by use of open vegetated swales and natural depressions, buffer strip and riparian zone preservation, filter strip creation, minimization of land disturbance and surface imperviousness, maximization of open space, and storm water retention and detention ponds.
 - (D) A sequence describing when each postconstruction storm water quality measure will be installed.
 - (E) Storm water quality measures that will remove or minimize pollutants from storm water run-off.
 - (F) Storm water quality measures that will be implemented to prevent or minimize adverse impacts to stream and riparian habitat.

(G) A narrative description of the maintenance guidelines for all postconstruction storm water quality measures to facilitate their proper long term function. This narrative description shall be made available to future parties who will assume responsibility for the operation and maintenance of the postconstruction storm water quality measures.

(b) For a single-family residential development consisting of four (4) or fewer lots or a single-family residential strip development where the developer offers for sale or lease without land improvements, and the project is not part of a larger common plan of development or sale, the project site owner shall develop a set of construction plans containing storm water quality measures that achieve the minimum project site requirements specified in section 7 of this rule. The construction plan must include the following:

- (1) Project narrative and supporting documents, including the following information:
 - (A) An index indicating the location, in the construction plans, of all required items in this subsection.
 - (B) Description of the nature and purpose of the project.
 - (C) Legal description of the project site. The description should be to the nearest quarter section, township, and range, and include the civil township.
 - (D) Soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
 - (E) Hydrologic Unit Code (14 Digit) available from the United States Geological Survey (USGS).
 - (F) Identification of any other state or federal permits that are required for construction activities associated with the project site owner's project site.
- (2) Vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads, such as a USGS topographic quadrangle map or county or municipal road map.
- (3) A project site layout that must include the following information:
 - (A) Location and name of all wetlands, lakes, and water courses on or adjacent to the project site.
 - (B) Location of all existing structures on the project site (if applicable).
 - (C) One hundred (100) year floodplains, floodway fringes, and floodways. Please note if none exists.
 - (D) Soil map of the predominant soil types, as determined by the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) Soil Survey, or an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.
 - (E) Identification and delineation of vegetative cover, such as grass, weeds, brush, and trees, on the project site.
 - (F) Land use of all adjacent properties.
 - (G) Existing and proposed topography at a contour interval appropriate to indicate drainage patterns.
 - (H) Location of all proposed site improvements, including roads, utilities, lot delineation and identification, and proposed structures.
- (4) A storm water pollution prevention plan associated with construction activities. The plan must be designed to, at least, meet the requirements of sections 7 and 7.5 of this rule and must include the following:
 - (A) Delineation of all proposed land disturbing activities, including off-site

activities that will provide services to the project site.

(B) Location of all soil stockpiles and borrow areas.

(C) Location, size, and dimensions of all storm water drainage systems, such as culverts, storm sewers, and conveyance channels.

(D) Locations where storm water may be directly discharged into ground water, such as abandoned wells or sinkholes. Please note if none exist.

(E) Locations of specific points where storm water discharge will leave the project site.

(F) Name of all receiving waters. If the discharge is to a separate municipal storm sewer, identify the name of the municipal operator and the ultimate receiving water.

(G) Location, dimensions, detailed specifications, and construction details of all temporary and permanent storm water quality measures.

(H) Temporary stabilization plans and sequence of implementation of storm water quality measures.

(I) Temporary and permanent stabilization plans shall include the following:

(i) Specifications and application rates for soil amendments and seed mixtures.

(ii) The type and application rate for anchored mulch.

(J) Self-monitoring program plan and procedures.

(c) The SWCD or the ~~DNR-DSC representative~~ or other designated entity may upon finding reasonable cause require modification to the construction plan if it is determined that changes are necessary due to site conditions or project design changes. Revised plans, if requested, must be submitted to the appropriate entity within twenty-one (21) calendar days of a request for a modification. *(Water Pollution Control Division; 327 IAC 15-5-6.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 838; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2284; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 57. 327 IAC 15-5-8 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-5-8 Project termination

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 8. (a) The project site owner shall plan an orderly and timely termination of the construction activities, including the implementation of storm water quality measures that are to remain on the project site.

(b) The project site owner shall submit a notice of termination (NOT) letter to the commissioner and a copy to the appropriate SWCD or other designated entity in accordance with the following:

(1) Except as provided in subdivision (2), the project site owner shall submit an NOT letter when the following conditions have been met:

(A) All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized.

(B) All temporary erosion and sediment control measures have been removed.

The NOT letter must contain a verified statement that each of the conditions in this

subdivision has been met.

(2) The project site owner may submit an NOT letter to obtain early release from compliance with this rule if the following conditions are met:

- (A) The remaining, undeveloped acreage does not exceed five (5) acres, with contiguous areas not to exceed one (1) acre.
- (B) A map of the project site, clearly identifying all remaining undeveloped lots, is attached to the NOT letter. The map must be accompanied by a list of names and addresses of individual lot owners or individual lot operators of all undeveloped lots.
- (C) All public and common improvements, including infrastructure, have been completed and permanently stabilized and have been transferred to the appropriate local entity.
- (D) The remaining acreage does not pose a significant threat to the integrity of the infrastructure, adjacent properties, or water quality.
- (E) All permanent storm water quality measures have been implemented and are operational.

(c) Following acceptance of the NOT letter and written approval from the department for early release under subsection (b), the project site owner shall notify all current individual lot owners and all subsequent individual lot owners of the remaining undeveloped acreage and acreage with construction activity that they are responsible for complying with section 7.5 of this rule. The remaining individual lot owners do not need to submit an NOI letter or NOT letter. The notice must contain a verified statement that each of the conditions in subsection (b)(2) have been met. The notice must also inform the individual lot owners of the requirements to:

- (1) install and maintain appropriate measures to prevent sediment from leaving the individual building lot; and
- (2) maintain all erosion and sediment control measures that are to remain on-site as part of the construction plan.

(d) The SWCD, ~~DNR-DSC~~, other entity designated by the department or a regulated MS4 entity, or the department may inspect the project site to evaluate the adequacy of the remaining storm water quality measures and compliance with the NOT letter requirements. If the inspecting entity finds that the project site owner has sufficiently filed an NOT, letter, the entity shall forward notification to the department. Upon receipt of the verified NOT letter by the department and receipt of written approval from the department, the project site owner shall no longer be responsible for compliance with this rule.

(e) After a verified NOT letter has been submitted for a project site, maintenance of the remaining storm water quality measures shall be the responsibility of the individual lot owner or occupier of the property. *(Water Pollution Control Division; 327 IAC 15-5-8; filed Aug 31, 1992, 5:00 p.m.: 16 IR 25; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 843; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 58. 327 IAC 15-6-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 1. The purpose of this rule is to establish requirements for storm water discharges exposed to industrial activity that are composed entirely of storm water and allowable nonstorm water ~~so that to protect~~ the public health, existing water uses, and aquatic biota. ~~are protected.~~
(Water Pollution Control Division; 327 IAC 15-6-1; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 845; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 59. 327 IAC 15-6-2 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-2 Applicability of the general permit rule for storm water discharges exposed to industrial activity

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 4-21.5; IC 13-12-3-1; IC 13-18-1

Sec. 2. (a) Except as provided in subsections (c) through (j), the requirements under this rule apply to all facilities that meet the following requirements:

- (1) Are not prohibited from regulation under a ~~an~~ NPDES general permit rule under 327 IAC 15-2-6.
- (2) Meet the NPDES general permit rule applicability requirements under 327 IAC 15-2-3.
- (3) Have not received a conditional no exposure exclusion from storm water permitting under section 12 of this rule.
- (4) Have a new or existing point source discharge composed entirely of storm water and the following allowable nonstorm water discharges exposed to industrial activity:
 - (A) Discharges from firefighting activities.
 - (B) Fire hydrant flushings.
 - (C) Potable water sources, including waterline flushings.
 - (D) Irrigation drainage.
 - (E) Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions.
 - (F) Routine external building washdown that does not use detergents.
 - (G) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed, and where detergents are not used.
 - (H) Uncontaminated ground water or spring water.
 - (I) Foundation or footing drains where flows are not contaminated with process materials, such as solvents.
 - (J) Uncontaminated air conditioning or compressor condensate.
 - (K) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (for example, piped cooling tower blowdown or drains).
 - (L) Vehicle washwaters where uncontaminated water, without detergents or solvents, is utilized.
 - (M) Run-off from the use of dust suppressants approved for use by other program areas within the department.

Allowable nonstorm water discharges described under this subdivision may be allowed under this rule provided they have not been identified by the permittee or commissioner as a significant

contributor of pollutants to a water of the state. If an allowable nonstorm water discharge is determined to be a significant contributor of pollutants to a water of the state an individual wastewater permit may be required for the discharge.

(5) Have industrial activities classified by one (1) or more of the following categories:

(A) Facilities classified under the following SIC codes:

- (i) 20 (food and kindred products).
- (ii) 21 (tobacco products).
- (iii) 22 (textile mill products).
- (iv) 23 (apparel and other textile products).
- (v) 24 (lumber and wood products).
- (vi) 25 (furniture and fixtures).
- (vii) 26 (paper and allied products).
- (viii) 27 (printing and publishing).
- (ix) 28 (chemicals and allied products).
- (x) 29 (petroleum and coal products).
- (xi) 30 (rubber and miscellaneous plastic products).
- (xii) 31 (leather and leather products).
- (xiii) 32 (stone, clay, and glass products).
- (xiv) 33 (primary metal industries).
- (xv) 34 (fabricated metal products).
- (xvi) 35 (industrial machinery and equipment).
- (xvii) 36 (electronic and other electric equipment).
- (xviii) 37 (transportation equipment).
- (xix) 38 (instruments and related products).
- (xx) 39 (miscellaneous manufacturing industries).

(B) Except for those facilities identified in subsection (e), mining operations classified under the following SIC codes:

- (i) 10 (metal mining).
- (ii) 13 (oil and gas extraction).
- (iii) 14 (nonmetallic minerals, except fuels).

(C) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921)**.

(D) Except for those facilities identified in subsection (f), landfills, land application sites, open dumps, and transfer stations that receive, or have received, industrial process wastes, as defined in rules of the ~~solid waste management~~ board at 329 IAC 10-2-95, from any of the types of facilities described under this subdivision.

(E) Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including those classified under the following SIC codes:

- (i) 5015 (motor vehicles parts, used).
- (ii) 5093 (scrap and waste materials).

(F) Steam electric power generating facilities except for those facilities identified in subsection (g).

(G) Transportation facilities that have vehicle or aircraft maintenance (including vehicle or aircraft rehabilitation, mechanical repairs, painting, fueling, and lubrication), airport runway or aircraft deicing operations, or industrial equipment cleaning areas and are classified under the following SIC codes:

- (i) 40 (railroad transportation).
- (ii) 41 (local and interurban passenger transit).
- (iii) 42 (trucking and warehousing).
- (iv) 43 (United States Postal Service).
- (v) 44 (water transportation).
- (vi) 45 (transportation by air).

(H) Except for those facilities identified in subsections (i) and (j), treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of one million (1,000,000) gallons per day or more, or that are required to have an approved pretreatment program under 40 CFR 403***.

(I) Distribution facilities limited to the portions of the facility that are involved in the material handling of agricultural chemicals (chemical fertilizers and pesticides) or are otherwise identified under this clause shall comply with the requirements of this rule if the following conditions are met:

- (i) Have been notified by the department of a determination that the facility is subject to this rule because review of available information shows that:
 - (AA) the facility had a discharge of a pollutant; or
 - (BB) there is a likelihood of a discharge of a pollutant to waters of the state.

A facility that has been notified by the department according to this item that the facility is subject to this rule may exercise its right granted under IC 4-21.5.

(ii) Are involved in the processing, transfer, or storage of agricultural chemicals (chemical fertilizers and pesticides), which meet any of the following storage capacity criteria:

- (AA) Fluid bulk fertilizer in undivided quantities in excess of either two thousand five hundred (2,500) gallons for one (1) vessel or seven thousand five hundred (7,500) gallons total for multiple vessels (3 × 2,500 gallon vessels) at a facility.
- (BB) Dry bulk fertilizer in undivided quantities exceeding twelve (12) tons.
- (CC) Liquid pesticide in undivided quantities in excess of four hundred (400) gallons.
- (DD) Dry pesticide in undivided quantities in excess of one hundred (100) pounds and that is in solid form prior to any application or mixing for application and includes formulations, such as dusts, wettable powders, dry flowable powders, and granules.

(J) Facilities engaged in selling fuel or lubricating oils to the trucking industry, where the facility has on-site vehicle maintenance activities, serves as a truck stop or plaza, and are classified as SIC code 5541 (gasoline service stations). Truck stops and plazas that do not have vehicle maintenance activities and gasoline dispensing facilities, such as automotive service stations, convenience stores, and marinas, are not required to comply with this rule.

(b) When a facility, meeting the applicability requirements of subsection (a), is owned by one (1) person but the regulated industrial activity is conducted by another person, it is the duty of the person conducting the regulated industrial activity to apply for a permit under this rule.

(c) A facility classified in one (1) of the following subcategories of facilities that has storm water effluent guidelines for at least one (1) of its subcategories, in effect on February 12, 1992, shall apply for an individual NPDES storm water permit:

- (1) Cement manufacturing (40 CFR 411).
- (2) Feedlots (40 CFR 412).
- (3) Fertilizer manufacturing (40 CFR 418).
- (4) Petroleum refining (40 CFR 419).
- (5) Phosphate manufacturing (40 CFR 422).
- (6) Steam electric power generation (40 CFR 423).
- (7) Coal mining (40 CFR 434).
- (8) Mineral mining and processing (40 CFR 436).
- (9) Ore mining and dressing (40 CFR 440).
- (10) Asphalt (40 CFR 443).

(d) A facility subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Chapter I, Subchapter N* shall apply for an individual NPDES storm water permit.

(e) A sand, gravel, or dimension stone facility classified under SIC code 14 is not subject to this rule if:

- (1) it is regulated under a general permit issued ~~under 327 IAC 15-12;~~ **by the department;** and
- (2) all the regulated facility's storm water discharges are addressed by the general permit issued ~~under 327 IAC 15-12;~~ **by the department.**

(f) A landfill is not subject to this rule if it has satisfied one (1) or more of the following conditions:

- (1) Has completed landfill closure approved by the department.
- (2) Is regulated under an individual municipal solid waste landfill permit that:
 - (A) is issued according to 329 IAC 10; and
 - (B) includes requirements for addressing the quality of storm water run-off.

(g) Steam electric power generating facilities that are involved in the processing, handling, or storage of coal and associated byproducts are not subject to this rule and must apply for an individual NPDES storm water permit.

(h) Transportation facilities identified by SIC code 5171 (petroleum bulk stations and terminals) are not subject to this rule and shall, if facility conditions meet the rule applicability requirements **for a general permit issued by the department,** obtain **a, "Wastewater Discharge Associated with Petroleum Products Terminals" general permit.** ~~coverage under 327 IAC 15-9.~~

(i) Municipal treatment works are not subject to this rule if the treatment works meet the following conditions:

- (1) Treat domestic sewage or any other sewage sludge or wastewater.

- (2) Have a design flow equal to or greater than one million (1,000,000) gallons per day.
- (3) Are considered part of a municipality regulated under 327 IAC 15-13.
- (4) Are adequately covered under the requirements of 327 IAC 15-13-17.

(j) Farmland, domestic gardens, or land used for sludge management is not subject to this rule if the following conditions are met:

- (1) Sludge is beneficially reused.
- (2) The land is not physically located within:
 - (A) the confines of a municipal treatment works facility; or
 - (B) areas that are in compliance with Section 405 of the Clean Water Act (33 U.S.C. 1345)****.

*Copies of the Code of Federal Regulations (CFR) 40 CFR Chapter I, Subchapter N referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

**Copies of the Subtitle C of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. 6921) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

***Copies of the Code of Federal Regulations (CFR) 40 CFR 403 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

****Copies of Section 405 of the Clean Water Act (33 U.S.C. 1345) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. *(Water Pollution Control Division; 327 IAC 15-6-2; filed Aug 31, 1992, 5:00 p.m.: 16 IR 26; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 845; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2284; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 60. 327 IAC 15-6-4 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-4 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 4. In addition to the definitions contained in IC 13-11-2, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "Best management practices" or "BMPs" means any of the following measures to prevent or reduce the pollution of waters of the state:
 - (A) Schedules of activities.
 - (B) Prohibitions of practice.
 - (C) Treatment requirements.

(D) Operation and maintenance procedures.

(E) Use of containment facilities.

(F) Other management practices.

BMPs may be employed, for example, to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage, resulting from regulated industrial activities.

~~(2) "Commissioner" refers to the commissioner of the department.~~

~~(3)~~ (2) "Concentration" means the mass of any given material present in a unit volume of liquid. Unless otherwise indicated under this rule, concentration values must be expressed in milligrams per liter.

~~(4)~~ (3) "Deicing operations" means the use of urea, glycol, or other deicing substances to remove ice from aircraft or runways.

~~(5) "Department" refers to the department of environmental management.~~

~~(6) "Discharge of a pollutant" has the meaning set forth in 327 IAC 5-1.5-11.~~

~~(7)~~ (4) "Drainage" means the flow patterns of storm water run-off.

~~(8)~~ (5) "Drainage area" means the surface area draining storm water run-off.

~~(9)~~ (6) "Facility" means a parcel of land or site, together with all buildings, equipment, structures, and other stationary items that are:

(A) located on a single site or on contiguous or adjacent sites; and

(B) owned or operated by:

(i) the same person; or

(ii) any person that controls, is controlled by, or is under common control with the same person.

~~(10)~~ (7) "Good housekeeping" means maintaining a clean work environment to reduce or eliminate the potential mobilization of pollutants by storm water.

~~(11)~~ (8) "Impervious surface" means any surface that prevents storm water from readily infiltrating into the soils.

~~(12) "Individual NPDES permit" means a NPDES permit issued by the commissioner under 327 IAC 5 to a single facility that contains requirements specific to that individual facility.~~

~~(13)~~ (9) "Injection well" means any hole that is deeper than it is wide and through which fluids can enter the ground water. Injection wells are regulated under 40 CFR 145 and 40 CFR 144.

~~(14)~~ (10) "Material handling activity" means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product.

~~(15)~~ (11) "Measurable storm event" means a precipitation event which results in a total measured precipitation accumulation equal to, or greater than, one-tenth (0.1) inch of rainfall.

~~(16)~~ (12) "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains that is:

(A) owned or operated by a federal entity or state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law, such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288)* that discharges into waters of the state;

(B) designed or used for collecting or conveying storm water;

(C) not a combined sewer; and

(D) not part of a publicly owned treatment works (POTW) as defined in 40 CFR 122.2**.

~~(17)~~ **(13)** "No exposure" means a condition of a facility that exists when all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to precipitation or run-off.

~~(18)~~ **(14)** "Nonstructural control measure" means the use of nonphysical best management practices to reduce or eliminate mobilization of pollutants by storm water (for example, sweeping, inspections, training, and preventative maintenance).

~~(19)~~ "Notice of intent letter" or "NOI letter" means a written notification indicating a facility's intention to comply with the terms of this rule in lieu of applying for an individual NPDES permit. An NOI letter includes information required under section 5 of this rule.

~~(20)~~ **(15)** "Notice of termination letter" or "NOT letter" means a written notification indicating that facility has met the conditions to terminate its permit coverage under this rule.

(21) "Outfall" means the point of discharge from a point source.

~~(22)~~ **(16)** "Pervious surface" means a ground surface that readily allows storm water to infiltrate or percolate into the soils.

~~(23)~~ "Point source" has the meaning set forth in 327 IAC 5-1.5-40.

~~(24)~~ **(17)** "Qualified professional" means an individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

~~(25)~~ **(18)** "Qualified storm event" means a discharge resulting from a measurable storm event at least seventy-two (72) hours after the previous measurable storm event. The term does not include discharges of snowmelt.

~~(26)~~ **(19)** "Risk identification" means a ~~nonstatistical~~ **non-statistical** assessment to determine the potential for storm water to be exposed to pollutants and the facility's subsequent need for additional protection practices and measures.

~~(27)~~ **(20)** "Secondary containment structure" means a structure or a part of a structure that prevents or impedes a hazardous material that is released accidentally from entering surface water or ground water.

~~(28)~~ "SIC code" means the four (4) digit standard industrial classification code applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States.

~~(29)~~ **(21)** "Storm water discharge" means the release or flow of storm water from a point source, which enters a water of the state.

~~(30)~~ **(22)** "Storm water discharge exposed to industrial activity" means storm water discharge that has been exposed to the manufacturing and processing activities, or raw materials or intermediate products storage areas at an industrial facility. For the categories of industries identified in section 2(a)(5) of this rule, the term includes the following:

(A) Storm water discharges from industrial plant yards.

(B) Immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility.

- (C) Material handling sites.
- (D) Refuse sites.
- (E) Sites used for the application or disposal of process wastewaters (as defined in 40 CFR 401).
- (F) Sites used for the storage and maintenance of material handling equipment.
- (G) Sites used for residual treatment, storage, or disposal.
- (H) Shipping and receiving areas.
- (I) Manufacturing buildings.
- (J) Storage areas (including tank farms) for raw materials and intermediate and finished products.
- (K) Areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

(31) (23) "Storm water pollution prevention plan" or "SWP3" means a written document that addresses storm water run-off pollution prevention for a specific industrial facility.

(32) (24) "Structural control measure" means a physical structure designed to reduce or eliminate the mobilization of pollutants by storm water, for example, detention structures, berming, and vegetated swales.

*Copies of Section 208 of the Clean Water Act (33 U.S.C. 1288) referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.

**Copies of the Code of Federal Regulations (CFR) 40 CFR 122.2 referenced in this section may be obtained from the Government Printing Office, Washington, D.C. 20402 or the Indiana Department of Environmental Management, Office of Water Quality, Indiana Government Center-North, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (*Water Pollution Control Division; 327 IAC 15-6-4; filed Aug 31, 1992, 5:00 p.m.: 16 IR 27; errata filed Sep 10, 1992, 12:00 p.m.: 16 IR 65; errata, 16 IR 751; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; filed Oct 27, 2003, 10:15 a.m.: 27 IR 848; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2284; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA*)

SECTION 61. 327 IAC 15-6-8.5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-8.5 Permit compliance schedule

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 8.5. The following compliance schedule must be followed:

Permit Compliance Schedule

To apply for coverage	Submit a completed NOI letter
1 st year of permit coverage	Submit results of sampling data
	Develop and implement the SWP3
	Submit SWP3 certification checklist
	Submit annual report
2 nd year of permit coverage	Submit results of sampling data

	Submit annual report
3 rd year of permit coverage	Submit results of sampling data
	Submit annual report
4 th year of permit coverage	Submit results of sampling data
	Submit annual report
5 th year of permit coverage	Submit results of sampling data
	Submit annual report
90 days before permit expires	Resubmit a completed NOI letter
Permit renewals	Repeat annual sampling schedule
	Submit SWP3 certification checklist during the first year of renewal coverage only if substantial changes have been made on site or to the plan since its inception
	Submit annual reports

The compliance schedule begins from the date on the initial NOI letter submittal or the expiration date of the previous five (5) year permit term. All submittals to the commissioner must be sent to:

Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue, Room N1255
Indianapolis, Indiana 46204.
~~Attention: Rule 6 Storm Water Coordinator.~~

(Water Pollution Control Division; 327 IAC 15-6-8.5; filed Oct 27, 2003, 10:15 a.m.: 27 IR 859; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 62. 327 IAC 15-6-11 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-11 Termination of coverage; permit not transferable

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-12-3-1; IC 13-18-1

Sec. 11. (a) ~~A complete, state-issued An NOT letter, request form shall~~ **on a form provided by the commissioner, must** be submitted by a permittee regulated under this rule ~~to the commissioner for any of the following:~~

- (1) Closure of the facility.
- (2) Transfer of ownership or operator.
- (3) No exposure of all facility industrial activities to storm water.
- (4) All storm water run-off from the facility flows into a combined sewer system.
- (5) Storm water does not have the potential to impact a water of the state.

(b) ~~A permittee regulated under this rule shall submit a complete, state-issued An NOT letter request form to the commissioner upon~~ **for** closure of the ~~a~~ facility or ~~upon~~ transfer of ownership or operator as defined in 327 IAC 15-2-8 **must be submitted** within thirty (30) days of the date of closure or transfer.

(c) For transfers, the new owner or operator must submit a new NOI letter within sixty (60) days of the date of closure or transfer.

~~(e)~~ **(d)** For a permittee to **make a claim of** termination based on no exposure to industrial activities, a complete "No Exposure Certification" ~~form referenced in~~ **completed in accordance with** section 12 of this rule must be submitted with the NOT letter. ~~request form.~~

~~(d)~~ **(e)** For a permittee to **make a claim of** termination based on all storm water run-off flowing into a combined sewer system, a certification letter from the responsible party of the combined sewer system, on responsible party letterhead, ~~shall~~ **must** be submitted with the NOT letter. ~~request form.~~

~~(e)~~ **(f)** The completed NOT ~~request form~~ will be reviewed by the commissioner within sixty (60) days of the submittal date. ~~During this sixty (60) day review period,~~ The permit ~~shall remain effective.~~ **remains in effect during the review timeframe.**

~~(g)~~ **Upon completion of** review is complete, ~~one (1) of the following commissioner may occur:~~

- ~~(1) An~~ **approve the** NOT letter will be mailed to the requester. **request;**
- (2) deny the NOT request; or**
- ~~(2)~~ **(3) request** an on-site verification inspection. ~~will be requested.~~
- ~~(3) The NOT request will be denied.~~

(h) If the permittee does not receive ~~any of the above notifications~~ **a notification under subsection (g)** within sixty (60) days of the NOT request submittal, the NOT request will be ~~considered adequate.~~ **deemed approved.**

~~(f)~~ **(i)** ~~An NOT letter may be issued by~~ The commissioner ~~if:~~ **may issue an NOT letter for any of the following occurrences:**

- (1) Effluent standards and limitations are promulgated for discharges subject to this rule.
- ~~or~~

- (2) It is determined that a general permit is not adequate to protect water quality.

When a general permit is not adequate, an individual NPDES storm water permit will be issued. *(Water Pollution Control Division; 327 IAC 15-6-11; filed Oct 27, 2003, 10:15 a.m.: 27 IR 860; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 63. 327 IAC 15-6-12 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-6-12 Conditional no exposure exclusion

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2; IC 13-18-3; IC 13-18-4

Affected: IC 13-11-2; IC 13-12-3-1; IC 13-18-1

Sec. 12. (a) In addition to the definitions contained in IC 13-11-2, 327 IAC 5, 327 IAC 15-1-2, and section 4 of this rule, the following definitions apply throughout this section:

- (1) "Adequately maintained vehicle" means a vehicle (truck, automobile, forklift, trailer, or other general purpose vehicle) found on facility property that is not industrial machinery and not leaking or otherwise a potential source of contaminants.

(2) "Final product" means a product that is not used in producing other products and is built and intended for use outdoors, provided the final product has not deteriorated or has otherwise become a potential source of contaminants.

(3) "Industrial materials and activities" means:

- (A) material handling equipment or activities;
- (B) industrial machinery;
- (C) raw materials, intermediate products, byproducts, and final products; or
- (D) waste products.

(4) "Intermediate product" means a product that is used in the composition of yet another product.

(5) "Material handling activity" means the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct, or waste product. The term does not include activities conducted on facility property separate from the facility's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with storm water drained from the included areas.

(6) "Sealed container" means a container that has been banded or otherwise secured, without operational taps or valves, provided the container is not deteriorated and does not leak.

(7) "Storm-resistant shelter" means a completely roofed and walled building or structure, as well as a structure with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent run-off of storm water.

(b) A facility regulated under this rule may request an exclusion from permit coverage by:

(1) submitting a complete ~~United States Environmental Protection Agency~~ "No Exposure Certification" form ~~3510-11 (10-99)~~ to **provided by** the commissioner;

(2) allowing the commissioner to inspect the facility to determine compliance with the "no exposure" conditions;

(3) allowing the commissioner to make any "no exposure" inspection reports available to the public upon request; and

(4) for facilities that discharge through a regulated MS4 conveyance, upon request, submitting a copy of the certification of "no exposure" to the MS4 operator, as well as allowing inspection and public reporting by the MS4 operator.

(c) New or existing facilities that were not previously required to obtain a permit under this rule, but are subject to it, must either obtain permit coverage in accordance with sections 5 and 6 of this rule or comply with the procedures in subsection (b).

~~(d) Facilities that have an existing permit under this rule must also submit an NOT letter with the "No Exposure Certification" form.~~

~~(e)~~ **(d)** To determine if a facility can apply for the no exposure certification, the following must be considered:

(1) A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off.

(2) The conditional no exposure exclusion is available on a facility-wide basis only, not

for individual outfalls, and a no exposure certification must be provided for each facility qualifying for the no exposure exclusion.

(3) The no exposure certification requirement applies to all industrial facilities regulated under this rule, including light industrial facilities that were previously not required to submit documentation to be excluded from storm water permitting requirements.

(4) A storm-resistant shelter is not required for the following industrial materials and activities:

(A) Drums, barrels, tanks, and similar containers that are tightly sealed, provided these containers are not deteriorated and do not leak.

(B) Adequately maintained vehicles used in material handling.

(C) Final products, except those products that would be mobilized in storm water discharges (for example, rock salt), products that may, when exposed to storm water, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants, or final products that are in actuality intermediate products.

(5) Particulate matter emissions from roof stacks and vents that are **otherwise** regulated by, and in compliance with, **the department's** other environmental protection programs (for example, air quality control programs) and do not cause storm water contamination are considered not exposed. Particulate matter or visible deposits of residuals from roof stacks and vents not otherwise regulated (for example, under an air quality control program) and evident in storm water discharges are considered exposed. Likewise, visible "track out" (pollutants carried on the tires of vehicles) and windblown raw materials are considered exposed.

(6) General and industrial refuse and trash **contained in covered, nonleaking containers** are not considered exposed as long as the containers are completely covered and nothing can drain out holes in their bottoms or is **be** lost in loading onto a garbage truck. General and industrial refuse and trash that are left uncovered, however, are considered exposed.

(7) Storm water run-off from separate office buildings and their associated parking lots do not need to be considered when determining no exposure at an industrial facility.

(8) Temporary covers may be used to shelter materials and activities until permanent enclosure can be achieved. The temporary sheltering of industrial materials and activities is only allowed during facility renovation or construction.

(9) Aboveground storage tanks (ASTs) are generally considered not exposed and may be exempt from the prohibition against adding or withdrawing materials to or from external containers. For an AST to be operational and qualify for no exposure:

(A) it must be physically separated from, and not associated with, vehicle maintenance operations;

(B) there must be no piping, pumps, or other equipment leaking contaminants that could contact storm water; and

(C) it must be surrounded by some type of physical containment to prevent run-off in the event of a structural failure or leaking transfer valve.

~~(f)~~ (e) The no exposure certification must ~~require~~ **include** the ~~submission of the~~ following information: ~~at a minimum, to aid the department in determining if the facility qualifies for the no exposure exclusion:~~

(1) The person's name, address, and phone number.

(2) The facility name and address, the county name, and the latitude and longitude where the facility is located.

(3) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

- (A) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to storm water.
- (B) Materials or residuals on the ground or in storm water inlets from spills or leaks.
- (C) Materials or products from past industrial activity.
- (D) Material handling equipment (except adequately maintained vehicles).
- (E) Materials or products during loading and unloading or transporting activities.
- (F) Materials or products stored outdoors (except final products intended for outside use, for example, new cars, where exposure to storm water does not result in the discharge of pollutants).
- (G) Materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar containers.
- (H) Materials or products handled or stored on roads or railways owned or maintained by the facility.
- (I) Waste material (except waste in covered, nonleaking containers, for example, dumpsters).
- (J) Application or disposal of process wastewater (unless otherwise permitted).
- (K) Particulate matter or visible deposits of residuals from roof stacks or vents not otherwise regulated, that is, under an air quality control permit, and evident in the storm water outflow.

(4) All no exposure certifications must include the following certification statement and be signed in accordance with 327 IAC 15-4-3(g) **and 327 IAC 15-4-3(h)**.: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under subsection (e)(4)): **(d)(4)**). I understand that I am obligated to submit a no exposure certification form once every five (5) years to the department and, if requested, to the operator of the local regulated MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local regulated MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.".

~~(g) (f)~~ Information contained in the "No Exposure Certification" form 3510-11 (10-99)* and the United States Environmental Protection Agency's "Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water"(EPA 833-B-00-001 June 2000)** **provided by the commissioner** shall be used by the commissioner to determine whether a facility is eligible for the exclusion. Definitions of terms provided in these documents shall apply to the commissioner's interpretation of the no

exposure exclusion.

~~(h)~~ **(g)** A facility excluded under this section shall meet the following requirements:

(1) A copy of the "No Exposure Certification" form must be retained on site at the facility for a period of five (5) years following the date that the commissioner received the original form in order for the no exposure exclusion to remain applicable.

(2) The "No Exposure Certification" form must be submitted once every five (5) years to the commissioner **with updated information as necessary**.

(3) The certification for no exposure is nontransferable. If a new operator or owner takes over a facility, the new operator shall immediately complete and submit a new certification form in order to claim the exclusion.

(4) If changes at a facility result in industrial activities or materials becoming exposed to storm water, the no exposure exclusion ceases to apply. The person with financial responsibility or operational control for the facility must submit an NOI letter in accordance with sections 5 and 6 of this rule at least two (2) days before the foreseen changes happen that cause the condition of exposure.

(5) If unforeseen events, such as spills, equipment malfunctions, or acts of nature, cause industrial activities or materials to become exposed to storm water, the no exposure exclusion may still apply provided notification is given to the commissioner within twenty-four (24) hours of facility personnel becoming aware of the exposure and corrective measures are taken to reestablish a condition of no exposure prior to the next storm water discharge event.

~~(+)~~ **(h)** If the commissioner finds that, during a compliance inspection or at a later time, the facility has a reasonable potential to cause a violation or nonattainment of a water quality standard or does not meet the conditions for the no exposure exclusion, the commissioner may, upon notifying the facility in writing, deny or revoke the exclusion and require the facility to obtain permit coverage within thirty (30) days of the date on the notification letter.

~~(+)~~ **(i)** Failure to maintain the condition of no exposure or obtain coverage under an NPDES permit may lead to the unauthorized discharge of pollutants to waters of the state.

~~*Copies of the No Exposure Certification Form referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204.~~

~~**Copies of the Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on "No Exposure" of Industrial Activities to Storm Water referenced in this section are available from the Indiana Department of Environmental Management, Office of Water Quality, 100 North Senate Avenue, Room N1255, Indianapolis, Indiana 46204. (Water Pollution Control Division; 327 IAC 15-6-12; filed Oct 27, 2003, 10:15 a.m.: 27 IR 860; errata filed Feb 4, 2004, 1:45 p.m.: 27 IR 2285; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)~~

SECTION 64. 327 IAC 15-7-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-7-1 Purpose

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to regulate wastewater discharges from surface mining, underground mining, and reclamation projects which utilize sedimentation basin treatment for pit dewatering and surface run-off and to require best management practices for storm water run-off ~~so that to protect~~ the public health, existing water uses, and aquatic biota. ~~are protected.~~ (*Water Pollution Control Division; 327 IAC 15-7-1; filed May 25, 1994, 11:00 a.m.: 17 IR 2284; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA*)

SECTION 65. 327 IAC 15-7-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-7-5 NOI letter requirements under this rule

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-18-4

Sec. 5. (a) In addition to the NOI letter requirements contained in 327 IAC 15-3, a person regulated under this rule must submit with the NOI letter requirements under this rule the following information:

- (1) The discharge location of each outfall, including each outfall regulated under section 7(b)(6) of this rule and its associated receiving stream.
- (2) An identifying outfall number. The numbering shall start at 001 for the first outfall, 002 for the second outfall, and continue in that manner until all outfalls are numbered. The sequential number assigned to any outfall identified under section 7(b)(6) of this rule shall be preceded by an "S".
- (3) For each numbered outfall, identify the mine drainage status regulated under section 7(a)(1) through 7(a)(4) of this rule. For numbered outfalls regulated under section 7(b)(6) of this rule, identify the outfall as discharging storm water.
- (4) The dry weather base flow value for each numbered outfall regulated under section 7(a)(1) through 7(a)(4) of this rule.
- (5) A topographical map identifying the location of the coal mining operation, the receiving streams, and the location of each numbered outfall.

(b) The NOI letter must also include proof of publication of the following statement in a newspaper of largest circulation in the area of the discharge:

"(Your facility name, address, address of the location of the discharging facility, and the stream(s) receiving the discharge(s)) is submitting a Notice of Intent letter to notify the Indiana Department of Environmental Management of our intent to comply with the requirements under 327 IAC 15-7 to discharge wastewater associated with the mining of coal, coal processing, and/or reclamation activities. Any person aggrieved by this action may appeal in writing to the ~~Technical Secretary~~ **Environmental Law Judge** of the ~~Water Pollution Control Board~~ **Office of Environmental Adjudication** for an adjudicatory hearing on the question of whether this facility should operate under this NPDES general permit rule. An appeal must be postmarked no later than fifteen (15) days from the date of this public notice. Such a written request for an adjudicatory hearing must:

- (A) state the name and address of the person making the request;
- (B) identify the interest of the person making the request;
- (C) identify any persons represented by the person making the request;
- (D) state with particularity the reasons for the request;

(E) state with particularity the issues proposed for consideration at the hearing;
and

(F) state with particularity the reasons why the NPDES general permit rule should not be available to the discharger identified in this notice.

Any such request shall be mailed or delivered to:

Office of Environmental Adjudication
Indiana Government Center-North
100 North Senate Avenue, Room N1049 N501
Indianapolis, Indiana 46204".

(c) Following submittal of a ~~an~~ NOI letter to IDEM and publication in the newspaper by the person requesting coverage under subsection (b), IDEM shall do the following:

(1) Review the NOI for applicability pursuant to section 3 of this rule and for compliance with the requirements of subsection (a).

(2) List this facility, the NPDES general permit tracking number, and the information contained in this notice in a monthly publication to be distributed by IDEM to all persons who have asked to receive NPDES general permit rule notification. This monthly publication shall be issued by IDEM on the fifteenth day of every month and shall identify all facilities which met both the NOI and newspaper publication requirements in the preceding month. Requests to be placed on the NPDES general permit rule notification list shall be mailed or delivered to the address at 327 IAC 15-3-1. IDEM's monthly publication will also contain the following instructions:

"Any person aggrieved by this action may appeal in writing to the ~~Technical Secretary~~
Environmental Law Judge of the ~~Water Pollution Control Board~~ **Office of Environmental Adjudication** for an adjudicatory hearing on the question of whether this facility should operate under this NPDES general permit rule. An appeal must be postmarked no later than fifteen (15) days from the publication date of this public notice.

Such a written request for an adjudicatory hearing must:

(A) state the name and address of the person making the request;

(B) identify the interest of the person making the request;

(C) identify any persons represented by the person making the request;

(D) state with particularity the reasons for the request;

(E) state with particularity the issues proposed for consideration at the hearing;
and

(F) identify the NPDES general permit rule terms and conditions which, in the judgment of the person making the request, would be appropriate to satisfy the requirements of the law governing this NPDES general permit rule. If any person filing such objections desires any part of this NPDES general permit rule to be stayed pending the outcome of the appeal, a specific request for such must be included in the request identifying those parts of the rule to be stayed.

Any such request shall be mailed or delivered to:

Office of Environmental Adjudication
Indiana Government Center-North
100 North Senate Avenue, Room N1049 N501
Indianapolis, Indiana 46204".

(d) An amended NOI letter containing the information required in 327 IAC 15-3 and subsection (a) shall be submitted for active or post mining areas and coal preparation plants and associated areas prior to initiating one (1) of the following events:

- (1) A point source discharge is added or deleted.
- (2) A change is made in mine drainage status to a point source discharge.
- (3) The point source discharge location is changed to a different receiving stream.

(e) A copy of the NOI letter and the amended NOI letter required under this section shall also be sent to the following address:

Indiana Department of Natural Resources
Division of Reclamation

R.R. #2, Box 129 14619 W State Road 48

Jasonville, Indiana 47438-9517 **47438-7056**

(Water Pollution Control Division; 327 IAC 15-7-5; filed May 25, 1994, 11:00 a.m.: 17 IR 2285; errata filed Jul 11, 1994, 3:00 p.m.: 17 IR 2657; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; errata filed Feb 6, 2006, 11:15 a.m.: 29 IR 1938; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)

SECTION 66. 327 IAC 15-7-9 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-7-9 Inspection and enforcement

Authority: IC 13-14-8; IC 13-14-9; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3

Affected: IC 13-18-4

Sec. 9. (a) In accordance with 327 IAC 5-1-3(c), **either or both** the commissioner ~~and/or~~ **or a** designated representative may inspect any facility regulated under this rule at any time.

(b) Any person violating any provision of this rule shall be subject to enforcement and penalties as set forth under **IC 13-30 and** 327 IAC 15-1-4. *(Water Pollution Control Division; 327 IAC 15-7-9; filed May 25, 1994, 11:00 a.m.: 17 IR 2289; readopted filed Jan 10, 2001, 3:23 p.m.: 24 IR 1518; readopted filed Nov 21, 2007, 1:16 p.m.: 20071219-IR-327070553BFA; readopted filed Jul 29, 2013, 9:21 a.m.: 20130828-IR-327130176BFA)*

SECTION 67. 327 IAC 15-13-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-13-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish requirements for storm water discharges from municipal separate storm sewer system (MS4) conveyances so that to protect public health, existing water uses, and aquatic biota. are protected. *(Water Pollution Control Division; 327 IAC 15-13-1; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3577)*

SECTION 68. 327 IAC 15-13-5 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-13-5 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-11-2; IC 13-18-4; IC 13-20-10; IC 14-32

Sec. 5. ~~For purposes of this rule,~~ **In addition to the definitions contained in IC 13-11-2,**

327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

- (1) "Best management practice" or "BMP" means any structural or nonstructural control measure utilized to improve the quality and, as appropriate, reduce the quantity of storm water run-off. The term includes schedules of activities, prohibitions of practice, treatment requirements, operation and maintenance procedures, use of containment facilities, land use planning, policy techniques, and other management practices.
- (2) "Buffer strip" means an existing, variable width strip of vegetated land intended to protect water quality and terrestrial and aquatic habitat in an adjacent resource or area.
- (3) "Canine park" means a designated public location where dogs are restricted and animal waste may accumulate. For the purposes of this rule, the term does not include kennels, municipal dog impoundments, or humane society buildings.
- (4) "Class V injection well" means a type of well, which typically has a depth greater than its largest surface dimension, emplaces fluids into the subsurface, and does not meet the definitions of Class I through Class IV wells as defined under 40 CFR 146.5. While the term includes the specific examples described in 40 CFR 144.81, septic systems that serve more than one (1) single-family dwelling or provide service for nondomestic waste, dug wells, bored wells, improved sinkholes, french drains, infiltration sumps, and infiltration galleries, it does not include surface impoundments, trenches, or ditches that are wider than they are deep.
- (5) "Combined sewer" means a sewer that is designed, constructed, and used to receive and transport combined sewage.
- (6) "Combined sewer operational plan" or "CSOOP" means a plan that contains the minimum technology controls applicable to, and requirements for operation and maintenance of, a combined sewer system:
 - (A) before;
 - (B) during; and
 - (C) upon completion of;
 the implementation of a long term control plan.
- ~~(7) "Commissioner" refers to the commissioner of the department of environmental management.~~
- ~~(8)~~ (7) "Constructed wetland" means a manmade shallow pool that creates growing conditions suitable for wetland vegetation and is designed to maximize pollutant removal.
- ~~(9)~~ (8) "Contiguity" means an entity's proximity to a designated MS4 area in such a way that it allows for direct discharges of storm water run-off into the regulated MS4 conveyance.
- ~~(10)~~ (9) "Conveyance" means any structural process for transferring storm water between at least two (2) points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, and roadways.
- ~~(11)~~ (10) "Daily user population" means a population for an entity that is present at that location on a daily basis.
- ~~(12)~~ (11) "Dechlorinated swimming pool discharge" means chlorinated water that has either sat idle for seven (7) days following chlorination prior to discharge to the MS4 conveyance or, by analysis, does not contain detectable concentrations (less than five-hundredths (0.05) milligram per liter) of chlorinated residual.
- ~~(13) "Department" refers to the department of environmental management.~~
- ~~(14)~~ (12) "Detention basin" means a type of storage practice used to detain or slow storm water run-off and then release it through a positive outlet.
- ~~(15)~~ (13) "Disposal" means the:

- (A) discharge;
- (B) deposit;
- (C) injection;
- (D) spilling;
- (E) leaking; or
- (F) placing;

of any solid waste or hazardous waste into or on any land or water so that the solid waste or hazardous waste, or any constituent of the waste, may enter the environment, be emitted into the air, or be discharged into any waters, including ground waters.

~~(16)~~ **(14)** "Dry well" means a type of infiltration practice that allows storm water run-off to flow directly into the ground via a bored or otherwise excavated opening in the ground surface.

~~(17)~~ **(15)** "Filter strip" means a type of vegetative practice used to filter storm water run-off through the use of planted or existing vegetation near disturbed or impervious surfaces.

~~(18)~~ **(16)** "Floatable" means any solid waste that, due to its physical characteristics, will float on the surface of water. For the purposes of this rule, the term does not include naturally occurring floatables, such as leaves or tree limbs.

~~(19)~~ **(17)** "Flood plain" means the area adjoining a river, stream, or lake that is inundated by the base flood as determined by 312 IAC 10.

~~(20)~~ **(18)** "Floodway" means the channel of a river or stream and those portions of the flood plain adjoining the channel that are reasonably required to efficiently carry and discharge the peak flow from the base flood as determined by 312 IAC 10.

~~(21)~~ **(19)** "Full-time equivalent enrollment" means a college or university enrollment of undergraduate students currently taking fifteen (15) credit hours of course work and graduate or professional students currently taking twelve (12) credit hours of course work. Each respective fifteen (15) or twelve (12) credit hours of course work equals one (1) full-time equivalent.

~~(22)~~ **(20)** "Garbage" means all putrescible animal solid, vegetable solid, and semisolid wastes resulting from the:

- (A) processing;
- (B) handling;
- (C) preparation;
- (D) cooking;
- (E) serving; or
- (F) consumption;

of food or food materials.

~~(23)~~ **(21)** "General permit rule boundary" means an area based upon existing geographic or political boundaries indicating the area within which an MS4 conveyance affected by this rule is located.

~~(24)~~ **(22)** "Grass swale" means a type of vegetative practice used to filter storm water run-off via a vegetated, shallow-channel conveyance.

~~(25)~~ **(23)** "Ground water" means such accumulations of underground water, natural or artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state. The term does not include manmade underground storage or conveyance structures.

~~(26)~~ **(24)** "Household hazardous waste" or "HHW" means solid waste generated by households that:

- (A) is ignitable, as defined under 40 CFR 261.21;

- (B) is toxic, as defined under 40 CFR 261.24;
 - (C) is reactive, as defined under 40 CFR 261.23;
 - (D) is corrosive, as defined under 40 CFR 261.22; or
 - (E) otherwise poses a threat to human health or the environment.
- (27) **(25)** "Hydrologic unit code" or "HUC" means a numeric United States Geological Survey code that corresponds to a watershed area. Each area also has a text description associated with the numeric code.
- (28) **(26)** "Illicit discharge" means any discharge to an MS4 conveyance that is not composed entirely of storm water, except naturally occurring floatables, such as leaves or tree limbs. Sources of illicit discharges include sanitary wastewater, septic tank effluent, car wash wastewater, oil disposal, radiator flushing disposal, laundry wastewater, roadway accident spillage, and household hazardous wastes.
- (29) **(27)** "Impervious surface" means any surface that prevents storm water to readily infiltrate into the soils.
- (30) **(28)** "Individual NPDES permit" means an NPDES permit issued to one (1) MS4 operator that contains requirements specific to that MS4 conveyance.
- (31) **(29)** "Infiltration basin or trench" means a type of infiltration practice used to filter storm water run-off into soils via the use of installed structures with porous material.
- (32) **(30)** "Infiltration gallery" means a type of infiltration practice used to filter storm water run-off into soils that utilizes one (1) or more vertical pipes leading to a horizontal, perforated pipe laid within a trench, often backfilled with gravel or some other permeable material.
- (33) **(31)** "Infiltration practices" means any structural BMP designed to facilitate the percolation of run-off through the soil to ground water. Examples include infiltration basins or trenches, dry wells, and porous pavement.
- (34) **(32)** "Initial receiving water" means a water that is the direct recipient of a discharge from an MS4 area after the discharge passes through another MS4 conveyance.
- (35) **(33)** "Larger common plan of development or sale" means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is contiguous, or is known, designed, purchased, or advertised as a common unit or by a common name, such land shall be presumed as being offered for sale or lease as part of a larger common plan. The term also includes phased construction by a single entity for its own use.
- (36) **(34)** "Legally binding agreement" means a written, enforceable legal document used to describe responsibilities between joint permittees or other entities.
- (37) **(35)** "Load allocation" means the portion of a receiving waterbody's loading capacity that is attributed either to one (1) of its existing or future nonpoint sources of pollution or to natural background sources.
- (38) **(36)** "Long term control plan" or "LTCP" means a plan that is:
- (A) consistent with the federal Combined Sewer Overflow Control Policy (59 FR 18688); and
 - (B) developed in accordance with the recommendations set forth in Combined Sewer Overflows Guidance for Long-Term Control Plan (EPA 832B95002).
- (39) **(37)** "Minimum control measure" or "MCM" refers to the following minimum measures required by this rule:
- (A) Public education and outreach.
 - (B) Public participation and involvement.
 - (C) Illicit discharge detection and elimination.
 - (D) Construction site run-off control.

(E) Postconstruction run-off control.

(F) Pollution prevention and good housekeeping.

(40) **(38)** "MS4 area" means a land area comprising one (1) or more places that receives coverage under one (1) NPDES storm water permit regulated by this rule or 327 IAC 5-4-6(a)(4) and 327 IAC 5-4-6(a)(5).

(41) **(39)** "MS4 entity" means a public or private body that owns, operates, or maintains a storm water conveyance system, including a transportation agency operated by that body. The term can also include federal, state, city, town, county, district, association, or township public bodies and privately owned universities, colleges, or storm water utilities. For the purposes of this rule, the term does not include non-MS4 entity-owned shopping malls, office parks, apartment complexes, golf courses, churches, or hotels.

(42) **(40)** "MS4 operator" means the person responsible for development, implementation, or enforcement of the MCMs for a designated MS4 area.

(43) **(41)** "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains, that is:

(A) owned or operated by a:

- (i) federal, state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over storm water, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges into waters of the state; or
- (ii) privately owned storm water utility, hospital, university, or college having jurisdiction over storm water that discharges into waters of the state;

(B) designed or used for collecting or conveying storm water;

(C) not a combined sewer; and

(D) not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

(44) **(42)** "Municipal, state, federal, or institutional refueling area" means an operating gasoline or diesel fueling area whose primary function is to provide fuel to either municipal, state, federal, or institutional equipment or vehicles.

(45) **(43)** "Mutual drain" means a drainage system that:

- (A) is located on two (2) or more tracts of land that are under different ownership;
- (B) was established by the mutual consent of all the owners; and
- (C) was not established under or made subject to any drainage statute.

(46) **(44)** "Nonpoint source" means a source of water pollution that does not meet the definition of point source. The term includes in-place pollutants, direct wet and dry deposition, ground water inflow, and overland run-off.

(47) **(45)** "Notice of deficiency letter" or "NOD letter" means a written notification from the department indicating an MS4 entity's deficiencies in its NOI letter or SWQMP submittals.

(48) **(46)** "Notice of intent letter" or "NOI letter" means a written notification indicating an MS4 entity's intention to comply with the terms of this rule in lieu of applying for an individual NPDES permit and includes information as required under sections 6 and 9 of this rule. It is the application for obtaining permit coverage under this rule.

(49) **(47)** "Notice of sufficiency letter" or "NOS letter" means a written notification from the department indicating that an MS4 entity has sufficiently provided the required

information in its NOI letter or SWQMP submittals.

(50) **(48)** "Notice of termination letter" or "NOT letter" means a written notification from the department indicating that an MS4 entity has met the conditions to terminate its permit coverage under this rule.

(51) **(49)** "Open space" means any land area devoid of any disturbed or impervious surfaces created by industrial, commercial, residential, agricultural, or other manmade activities.

(52) **(50)** "Outfall" means a point source discharge via a conveyance of storm water run-off into a water of the state.

(53) **(51)** "Outfall scouring" means the deterioration of a stream bed or lake bed from an outfall discharge to an extent that the excessive settling of solid material results and aquatic habitat is diminished.

(54) **(52)** "Point source" means any discernible, confined, and discrete conveyance, including a pipe, ditch, channel, tunnel, conduit, well, or discrete fissure.

(55) **(53)** "Pollutant of concern" means any pollutant that has been documented via analytical data as a cause of impairment in any waterbody, or to another MS4, to which the MS4 discharges.

(56) **(54)** "Porous pavement" means a type of infiltration practice to improve the quality and reduce the quantity of storm water run-off via the use of manmade, pervious pavement which allows run-off to percolate through the pavement and into underlying soils.

(57) **(55)** "Private drain" means a drainage system that:

(A) is located on land owned by one (1) person or by two (2) or more persons jointly; and

(B) was not established under or made subject to any drainage statute.

(58) **(56)** "Programmatic indicator" means any data collected by an MS4 entity that is used to indicate implementation of one (1) or more minimum control measures.

(59) **(57)** "Qualified professional" means an individual who is trained and experienced in storm water treatment techniques and related fields as may be demonstrated by state registration, professional certification, experience, or completion of coursework that enable the individual to make sound, professional judgments regarding storm water control or treatment and monitoring, pollutant fate and transport, and drainage planning.

(60) **(58)** "Rain garden" means a vegetative practice used to alter impervious surfaces, such as roofs, into pervious surfaces for absorption and treatment of rainfall.

(61) **(59)** "Receiving stream" or "receiving water" means a waterbody that receives a discharge from an outfall. The term does not include private drains, unnamed conveyances, retention and detention basins, or constructed wetlands used as treatment.

(62) **(60)** "Redevelopment" means alterations of a property that change a site or building in such a way that there is disturbance of one (1) acre or more of land. The term does not include such activities as exterior remodeling.

(63) **(61)** "Responsible individual" means the person responsible for development, implementation, or enforcement of the MCMs for a designated MS4 entity.

(64) **(62)** "Retail gasoline outlet" means an operating gasoline or diesel fueling facility whose primary function is the resale of fuels. The term applies to facilities that create five thousand (5,000) or more square feet of impervious surfaces or generate an average daily traffic count of one hundred (100) vehicles per one thousand (1,000) square feet of land area.

(65) **(63)** "Retention basin" means a type of storage practice, that has no positive outlet, used to retain storm water run-off for an indefinite amount of time. Run-off from this

type of basin is removed only by infiltration through a porous bottom or by evaporation.

~~(66)~~ **(64)** "Riparian habitat" means a land area adjacent to a waterbody that supports animal and plant life associated with that waterbody.

~~(67)~~ **(65)** "Riparian zone" means a land area adjacent to a waterbody that is directly associated with that waterbody.

~~(68)~~ **(66)** "Sand" means mineral material with a size range between two (2) and one-sixteenth ($1/16$) millimeter diameter.

~~(69)~~ **(67)** "Sedimentation" means the settling and accumulation of unconsolidated material carried by storm water run-off.

~~(70)~~ **(68)** "Sensitive area" means a waterbody identified as needing priority protection or remediation based on:

- (A) having endangered or threatened species or their habitat;
- (B) usage as a public surface water supply intake;
- (C) usage for full body contact recreation, such as bathing beaches; or
- (D) outstanding state resource water classification as found in 327 IAC 2-1-11(b), 327 IAC 2-1.3-3(d), and 327 IAC 2-1.5-19(b).

~~(71)~~ **(69)** "Significant contributor of pollutants" means an MS4 entity or industrial facility that contributes pollutants into an MS4 conveyance in such a quantity or quality and to such a degree that it impacts the receiving MS4 operator's ability to comply with applicable state or federal law.

~~(72)~~ **(70)** "Soil and water conservation district" or "SWCD" means a political subdivision established under IC 14-32.

~~(73)~~ **(71)** "Solid waste" means any garbage, refuse, sludge for a waste treatment plant, sludge from a water supply treatment plant, sludge from an air pollution control facility, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, or agricultural operations or from community activities. The term does not include:

- (A) solid or dissolved material in:
 - (i) domestic sewage; or
 - (ii) irrigation return flows or industrial discharges;
 that are point sources subject to permits under Section 402 of the ~~Federal Water Pollution Control Act Amendments (33 U.S.C. 1342);~~ **Clean Water Act;**
- (B) source, special nuclear, or byproduct material (as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);
- (C) manures or crop residues returned to the soil at the point of generation as fertilizers or soil conditioners as part of a total farm operation; or
- (D) vegetative matter at composting facilities registered under IC 13-20-10.

~~(74)~~ **(72)** "Spill" means the unexpected, unintended, abnormal, or unapproved dumping, leakage, drainage, seepage, discharge, or other loss of petroleum, hazardous substances, extremely hazardous substances, or objectionable substances. The term does not include releases to impervious surfaces when the substance does not migrate off the surface or penetrate the surface and enter the soil.

~~(75)~~ "Standard Industrial Classification code" or "SIC code" means the four (4) digit code applicable to a particular industrial activity in accordance with the Standard Industrial Classification Manual published by the Office of Management and Budget of the Executive Office of the President of the United States.

~~(76)~~ **(73)** "Storage practices" means any structural BMP intended to store or detain storm water and slowly release it to receiving waters or drainage systems. The term includes detention and retention basins.

~~(77)~~ **(74)** "Storm drain marking" means any marking procedure that identifies a storm sewer inlet as draining directly to a receiving waterbody so as to avoid dumping pollutants. The procedures can include painted or cast messages and adhesive decals.

~~(78)~~ "Storm water" means water resulting from rain, melting or melted snow, hail, or sleet.

~~(79)~~ **(75)** "Storm water quality management plan" or "SWQMP" means a comprehensive written document that addresses storm water run-off quality within an MS4 area. The SWQMP is divided into three (3) different submittal parts as follows:

(A) Part A-Initial Application.

(B) Part B-Baseline Characterization and Report.

(C) Part C-Program Implementation.

~~(80)~~ **(76)** "Stream reach characterization and evaluation report" or "SRCER" means a written report that characterizes and evaluates the pollutant sources on receiving waters from a combined sewer system discharge.

~~(81)~~ **(77)** "Total maximum daily load" or "TMDL" means the sum of the daily individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background minus the sum of a specified margin of safety and any capacity reserved for growth. A TMDL sets and allocates the maximum daily amount of a pollutant that may be introduced into a waterbody and still assure attainment and maintenance of water quality standards.

~~(82)~~ **(78)** "Traffic phasing plan" means a written plan that addresses the installation of appropriate pollution prevention practices that is directly related to the land disturbance associated with infrastructure constructed to reroute vehicular traffic within an active construction zone. The term does not include detours that are directed away from the active construction area.

~~(83)~~ **(79)** "Urbanized area" or "UA" means a land area comprising one (1) or more places that together have a residential population of at least fifty thousand (50,000) and an overall population density of at least five hundred (500) people per square mile.

~~(84)~~ **(80)** "Vegetative practices" means any nonstructural or structural BMP that, with optimal design and good soil conditions, utilizes various forms of vegetation to enhance pollutant removal, maintain and improve natural site hydrology, promote healthier habitats, and increase aesthetic appeal. Examples include grass swales, filter strips, buffer strips, constructed wetlands, and rain gardens.

~~(85)~~ **(81)** "Waste transfer station" means a place where solid wastes are segregated for additional off-site processing or disposal.

~~(86)~~ **(82)** "Wasteload allocation" means the portion of a receiving stream's loading capacity that is allocated to one (1) of its existing or future point sources of pollution.

~~(87)~~ **(83)** "Waterbody" means any accumulation of water, surface or underground, natural or artificial, including rivers, streams, creeks, ditches, swales, lakes, ponds, marshes, wetlands, and ground water. The term does not include any storage or treatment structures.

~~(88)~~ **(84)** "Watercourse" means the path taken by flowing surface water.

~~(89)~~ "Waters" means:

(A) the accumulations of water, surface and underground, natural and artificial, public and private; or

(B) a part of the accumulations of water;

that are wholly or partially within, flow through, or border upon Indiana. The term does not include a private pond, or an off-stream pond, reservoir, or facility built for reduction or control of pollution or cooling of water before discharge, unless the discharge from the

~~pond, reservoir, or facility causes or threatens to cause water pollution.~~

(90) **(85)** "Watershed" means an area of land from which water drains to a common point.

(94) **(86)** "Wellhead protection area" has the meaning set forth at 327 IAC 8-4.1-1(27).

(Water Pollution Control Division; 327 IAC 15-13-5; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3578; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191; filed Nov 10, 2014, 1:51 p.m.: 20141210-IR-327130290FRA)

SECTION 69. 327 IAC 15-13-15 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-13-15 Storm water quality management plan construction site storm water run-off control MCM

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 15. (a) An MS4 operator shall develop an SWQMP that includes a commitment to develop, implement, manage, and enforce an erosion and sediment control program for construction activities that disturb one (1) or more acres of land within the MS4 area.

(b) Through an ordinance or other regulatory mechanism, the MS4 operator shall establish a construction program that controls polluted run-off from construction activities with a land disturbance greater than or equal to one (1) acre, or disturbances of less than one (1) acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one (1) or more acres of land. Except for state permitting process references and submittal deadlines of construction plans and permit applications in 327 IAC 15-5, this ordinance or other regulatory mechanism must contain, at a minimum, the requirements of 327 IAC 15-5. The MS4 operator may establish a permitting process and timetable for plan and application submittals that are different than that established under 327 IAC 15-5. The permitting process must include a requirement for the construction project site owner to submit a copy of the application directly to the department. A certification form shall be completed and submitted to the department once the ordinance or other regulatory mechanism is developed and a program has been implemented or three hundred sixty-five (365) days from the date the initial NOI letter submittal was received by the department, whichever is earlier. In subsequent permit terms, the certification form does not need to be completed and submitted. At a minimum, every five (5) years the regulatory mechanism and program shall be reviewed for adequacy and accuracy and updated as necessary. Until the MS4 operator program is implemented, NOI letters and construction plans for construction activities within the MS4 area will be submitted in accordance with 327 IAC 15-5-5 and 327 IAC 15-5-6 to the department and the local SWCD. ~~or department of natural resources, division of soil conservation, respectively.~~

(c) If the MS4 operator has not entered into a written agreement with the local SWCD to review and approve construction site plans or conduct construction site inspections, the MS4 operator shall provide an opportunity to the local SWCD to provide comments and recommendations to the MS4 operator on individual projects. This process may be accomplished by the MS4 operator establishing a local plan review and comment procedure, a project technical review committee, or other mechanism to solicit the input of the local SWCD.

(d) Failure of the SWCD to respond within a predetermined time period should not delay final action of the MS4 operator to approve plans or projects.

(e) In addition to any procedural requirements for submittal to the MS4 operator or MS4 designated entity, an NOI letter required under 327 IAC 15-5 must be submitted to the department for any projects within the MS4 area.

(f) The MS4 operator, or a designated MS4 entity, shall meet the following:

- (1) Develop requirements for the implementation of appropriate BMPs on construction sites to control sediment, erosion, and other waste.
- (2) Review and approve the construction plans submitted by the construction site operator before construction activities commence.
- (3) Develop procedures for site inspection and enforcement to ensure that BMPs are properly installed.
- (4) Establish written procedures to identify priority sites for inspection and enforcement based on, at a minimum, the nature and extent of the construction activity, topography, and the characteristics of soils and receiving water quality.
- (5) Develop procedures for the receipt and consideration of public inquiries, concerns, and information submitted regarding local construction activities.
- (6) Implement, at a minimum, a tracking process in which submitted public information, both written and verbal, is documented and then given to appropriate staff for follow-up.

(g) MS4 area personnel responsible for plan review, inspection, and enforcement of construction activities shall receive, at a minimum, annual training addressing such topics as appropriate control measures, inspection protocol, and enforcement procedures.

(h) An MS4 operator shall develop measurable goals for this MCM. To comply with this measure, specific outreach, compliance, and implementation goal percentages and timetables must be identified. At a minimum, goals must address relevant regulatory mechanism implementation, public informational request procedure implementation, site inspection procedure implementation, and construction site operator compliance improvement.

(i) For those construction activities operated by the MS4 operator or MS4 municipalities within the MS4 area, construction plans must be submitted to the local SWCD ~~the department of natural resources, division of soil conservation~~, or other entity designated by the department for review and approval. If the MS4 operator does not receive either a notice of deficiency or an approval within thirty-five (35) days of the submittal, the plan will be considered adequate. After a one (1) year period of compliance, the MS4 operator or the designated MS4 entity need not submit the plans and may review MS4-operated project construction plans internally. ~~with the written authorization of the department of natural resources, division of soil conservation.~~

(j) In addition to the requirements of 327 IAC 15-5-6.5, the MS4-operated project construction plans must include a traffic phasing plan for those projects that have the potential to alter vehicular traffic routes.

(k) In addition to the requirements of 327 IAC 15-5-6.5(a)(7), the MS4-operated project storm water pollution prevention plan must address the following areas outside of right-of-ways:

- (1) Utility relocation areas.
- (2) Material hauling and transportation routes/roads.
- (3) Borrow pits.
- (4) Temporary staging and material stockpile areas.
- (5) Temporary disposal areas for waste materials.

(Water Pollution Control Division; 327 IAC 15-13-15; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3590; errata filed Sep 8, 2003, 3:15 p.m.: 27 IR 191)

SECTION 70. 327 IAC 15-13-20 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-13-20 Permit termination

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 20. (a) An MS4 entity may request the department to terminate permit coverage under this rule if:

- (1) based on physical changes in the MS4 area, the permit is no longer needed;
- (2) based on a lack of cooperation between MS4 entities, a new general permit NOI letter is needed; or
- (3) based on documented reductions in population, population density, occupancy, or enrollment that result in numbers below minimum designation criteria and a request based on this subdivision will only be considered once a permit under this rule has expired.

(b) The department may terminate permit coverage under this rule and require an MS4 entity to apply for an individual permit if one (1) **or more** of the ~~six (6)~~ cases referenced in ~~327 IAC 15-2-9(b)~~ **327 IAC 15-2-9(a)** is applicable. *(Water Pollution Control Division; 327 IAC 15-13-20; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3594)*

SECTION 71. 327 IAC 15-13-22 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-13-22 Inspection and enforcement

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-14-10; IC 13-18-4; IC 13-30

Sec. 22. (a) The commissioner may inspect an MS4 entity regulated under this rule at any time. Any documentation required in sections 6 through 20 of this rule or related to implementation of this rule must be available at the physical address corresponding to the MS4 operator or the primary contact individual for review by the commissioner during normal business hours.

(b) At a minimum, records shall be established and maintained at the address referenced in subsection (a) for the five (5) years of the permit term. The five (5) year period will be extended:

- (1) automatically during the course of any unresolved litigation regarding the discharge of pollutants by the MS4 operator, or other MS4 entity regulated by the MS4 area permit, or regarding promulgated effluent guidelines applicable to the MS4 area; or
- (2) as requested by the regional administrator of the United States Environmental Protection Agency or the commissioner.

(c) The commissioner may request data to facilitate the identification or quantification of pollutants that may be released to the environment from an MS4 conveyance or to determine effectiveness of the MCMs.

(d) The commissioner, or an authorized representative, upon providing appropriate credentials, may inspect an MS4 entity regulated under this rule at any time. ~~As it pertains to sections 15 and 16 of this rule, the department of natural resources, division of soil conservation staff, or their designated representative, upon providing appropriate credentials, may inspect an~~ MS4 entity regulated under this rule at any time. Record keeping and reporting requirements for sections 15 and 16 of this rule shall conform to 327 IAC 15-5.

(e) All persons or MS4 entities responsible for the MS4 conveyances shall be responsible for complying with the SWQMP for the MS4 area and the provisions of this rule. Any person or MS4 entity causing or contributing to a violation of any provisions of this rule shall be subject to IC 13-30 and IC 13-14-10.

(f) All projects within a regulated MS4 area meeting the applicability requirements of 327 IAC 15-5 are subject to inspection and enforcement by the department or their designated representative for violations associated with 327 IAC 15-5. *(Water Pollution Control Division; 327 IAC 15-13-22; filed Jul 7, 2003, 2:15 p.m.: 26 IR 3594)*

SECTION 72. 327 IAC 15-14-1 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-14-1 Purpose

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-18-4

Sec. 1. The purpose of this rule is to establish requirements for point source discharges of treated sewage from on-site residential sewage discharging disposal systems within the Allen County on-site waste management district ~~so that~~ **to protect** the public health, existing water uses, and aquatic biota. ~~are protected.~~ *(Water Pollution Control Division; 327 IAC 15-14-1; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1563)*

SECTION 73. 327 IAC 15-14-3 IS AMENDED TO READ AS FOLLOWS:

327 IAC 15-14-3 Definitions

Authority: IC 13-14-8; IC 13-15-1-2; IC 13-15-2-1; IC 13-18-3-1; IC 13-18-3-2

Affected: IC 13-11-2; IC 13-18-4; IC 36-11

Sec. 3. In addition to the definitions contained in IC 13-11-2, 327 IAC 5, and 327 IAC 15-1-2, the following definitions apply throughout this rule:

(1) "CBOD₅" means Five (5)-day Carbonaceous Biochemical Oxygen Demand.

~~(2) "Commissioner" means the commissioner of the department of environmental management.~~

~~(3) "Department" means the department of environmental management.~~

(4) (2) "District" means the Allen County on-site waste management district established under IC 36-11.

~~(5) (3) "E. coli" means Escherichia coli bacteria.~~

~~(6) "Notice of intent letter" or "NOI" means a written notification indicating a person's intention to comply with the terms of a specified general permit rule in lieu of applying for an individual National Pollutant Discharge Elimination System (NPDES) permit and includes information as required by 327 IAC 15-3 and the general permit rules.~~

(7) (4) "On-site residential sewage discharging disposal system" means a sewage disposal

system that:

- (A) is located on a site with and serves a one (1) or two (2) family residence; and
- (B) discharges effluent off-site.

~~(8)~~ **(5)** "Permittee" means, for purposes of this rule, the owner of an on-site residential sewage discharging disposal system and the district in subdivision (4).

~~(9)~~ **(6)** "Sewage disposal system" means septic tanks, wastewater holding tanks, seepage pits, cesspools, privies, composting toilets, interceptors or grease traps, portable sanitary units, and other equipment, facilities, or devices used to:

- (A) store;
- (B) treat;
- (C) make inoffensive; or
- (D) dispose of;

human excrement or liquid carrying wastes of a domestic nature.

~~(10)~~ **(7)** "TSS" means total suspended solids.

(Water Pollution Control Division; 327 IAC 15-14-3; filed Dec 18, 2003, 10:39 a.m.: 27 IR 1564; errata filed Sep 2, 2004, 11:05 a.m.: 28 IR 214)

SECTION 74. THE FOLLOWING ARE REPEALED: 327 IAC 5-2-4; 327 IAC 5-18-10; 327 IAC 15-2-4; 327 IAC 15-3-4; 327 IAC 15-8; 327 IAC 15-9; 327 IAC 15-10; 327 IAC 15-11; 327 IAC 15-12.

SMALL BUSINESS ASSISTANCE INFORMATION

IDEM established a compliance and technical assistance (CTAP) program under IC 13-28-3. The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with IC 13-28-3 and IC 13-28-5, there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of IC 4-22-2-28.1, small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Jessica Faust-Hamblin

IDEM Small Business Regulatory Coordinator

IGCN 1225

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8172 or (800) 988-7901

ctap@idem.in.gov

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 4-4-35-8 is:

Erik Scheub

Office of Small Business and Entrepreneurship

One North Capitol, Suite 600

Indianapolis, IN 46204

(317) 232-5679

ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the

ombudsman's duties stated in IC 4-4-35-8, specifically IC 4-4-35-8(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

Small Business Assistance Program Ombudsman:

Steven N. Howell

IDEM Small Business Assistance Program Ombudsman

IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 232-8587 or (800) 451-6027

snhowell@idem.in.gov